

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x
MORGAN ART FOUNDATION LIMITED,

Plaintiff,

-against-

MICHAEL MCKENZIE, AMERICAN IMAGE ART,
JAMIE THOMAS AND JAMES W. BRANNAN AS
PERSONAL REPRESENTATIVE OF THE ESTATE
OF ROBERT INDIANA,

Defendants.

- - - - - x
MORGAN ART FOUNDATION LIMITED, SIMON
SALAMA-CARO, SHEARBROOK (US), LLC, FIGURE 5
ART LLC,
AND RICATALOGUE RAISONE, LLC

-against-

JAMES W. BRANNAN AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF ROBERT INDIANA,

Defendant.

- - - - - x

Zoom video conference deposition of
MICHAEL MCKENZIE, taken pursuant to
notice, was held remotely, commencing
September 10, 2021, 12:00 p.m., before
Leslie Fagin, a Stenographic Court
Reporter and Notary Public in the State
of New York.

- - -

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BY: BRIDGET ZERNER, ESQUIRE

ALSO PRESENT:

JUSTINE BARBARY, VIDEOGRAPHER

BRODERICK SCOTT, EXHIBIT TECHNICIAN

THE VIDEOGRAPHER: We are now on the record. This begins Videotape No. 1 in the deposition of Michael McKenzie in the matter of Morgan Art Foundation verse McKenzie et.

Today is Friday September 10, 2021, and the time is 12:04 p.m. This deposition is being taken virtually at the request of Quinn Emanuel Urquhart & Sullivan, LLP. The videographer is Justine Barbary of Magna Legal Services, and the court reporter is Leslie Fagin of Magna Legal Services.

Will counsel and all parties present state their appearances and whom they represent.

MS. SHAH: Maaran Shah from Quinn Emanuel Urquhart & Sullivan representing the plaintiff, Morgan Art Foundation Limited, and I'm joined also by my colleague Ryan Rakower.

MS. ZERNER: Bridget Zerner of Markham Read Zerner LLC for Michael McKenzie doing business as American

Image Art.

MICHAEL MCKENZIE, called as a witness, having been duly sworn by a Notary Public, was examined and testified as follows:

EXAMINATION BY

MS. SHAH:

Q. Good afternoon, Mr. McKenzie.

A. How are you?

Q. I'm good. Thanks. How are you?

A. Good.

Q. My name is Maaran Shah. I represent Morgan Art Foundation in this litigation. I am going to be asking you some questions this afternoon.

And if I refer to Morgan Art Foundation as Morgan or as MAF, you will understand what I'm referring to as Morgan Art Foundation, correct?

A. Yes. No problem.

Q. Thank you.

Now, I know you've done a deposition in this case before but just as a reminder of some rules of the road, this is

being taken down by a court reporter and so it's important that we each try to wait for the other to finish speaking before we speak so she can get an accurate transcript of the conversation.

A. Fine.

Q. I will need you to give verbal answers so yes, no, any verbal answer; not a shake of the head or nod of the head.

Do you understand?

A. Yes.

Q. And if I ask a question that you don't understand, please ask me to clarify.

A. Fine.

Q. Okay. If you don't ask me to clarify a question, if you go ahead and answer it, I am going to assume that you understood my question as asked.

Is that fair?

A. Makes sense.

Q. Now, because we are doing this remotely, I want to ask you a couple of questions about the room you are sitting in.

A. Okay.

1
2 Q. Where are you presently located?
3 A. I'm not sure what you are asking.
4 Q. What city are you in -- what city?
5 A. I'm in Katonah, New York.
6 Q. Okay. Are you in your home in
7 Katonah, New York?
8 A. I'm in my studio.
9 Q. Okay. Is there anyone else in the
10 room with you?
11 A. No.
12 Q. What -- I assume you are doing this
13 deposition on Zoom on an electronic device.
14 What is that device that you are looking at?
15 A. It's a computer.
16 Q. Other than the computer that you
17 are doing this Zoom deposition on, do you
18 have any other electronic devices in the
19 room?
20 A. Yes.
21 Q. What are they?
22 A. An Apple phone and a Pro MAC.
23 Q. Are those turned on or off?
24 A. The Pro MAC is turned off. The
25 iPhone is turned on.

1
2 Q. Sure. And if there is a break, you
3 know, you are entitled to communicate with
4 your attorney but I would ask that you don't
5 communicate with anyone else about the
6 deposition during the breaks.
7 A. I will only communicate with my
8 attorney. That's the plan.
9 Q. Okay. Do you understand the
10 purpose of today's deposition?
11 A. I think so.
12 Q. Can you tell me what you understand
13 that to be?
14 A. Whatever it is, you are trying to
15 determine something. I don't know what you
16 are trying to determine to tell you the
17 truth.
18 Q. Are you aware on August 5 attorneys
19 from Morgan Art Foundation conducted an
20 inspection of your studio?
21 A. I wasn't here, but I was told, yes,
22 that eight people were here for multiple
23 hours and went through whatever I have.
24 Q. Are you aware that that inspection
25 was done pursuant to a court order allowing

1
2 Q. Okay. Other than the Pro MAC and
3 the -- well, I suppose -- other than the Pro
4 MAC or the iPhone, do you have any other
5 electronic devices in the room?
6 A. You are not talking about, like, a
7 toaster and a coffee maker, right?
8 Q. No. Something you can communicate
9 on?
10 A. No, no, no. Those are the own two
11 things.
12 Q. Okay. I'm going to ask that during
13 the pendency of the deposition you keep the
14 laptop off unless you indicate you have a
15 need to use it during the deposition?
16 A. No. It's off. It's just -- it's
17 just shut. There's nothing there.
18 Q. Thank you.
19 And I'm going to also ask you to
20 confirm that during the pendency of the
21 deposition you won't use any electronic
22 devices to communicate with anyone about the
23 deposition.
24 A. I have no intention of doing that
25 except if there is a break, and...

1
2 Morgan Art Foundation to conduct that
3 inspection?
4 A. Yes, which I agreed to and probably
5 didn't have to.
6 Q. I would like to pull up tab 3,
7 please. I am just show you the court order
8 we are referring to. It will come up on the
9 screen share and also I can leave a copy in
10 the chat function if you want to open it for
11 yourself.
12 (Exhibit 1, Court Order, marked for
13 identification.)
14 Q. I am going to continue to ask you
15 questions while Broderick tries to pull that
16 up.
17 A. Okay.
18 Q. So we were just discussing the
19 court order permitting the inspection. Did
20 you see a copy of that court order that
21 permitted the inspection?
22 A. I don't remember. I think if
23 Mr. Markham told me they were going to do it,
24 I would have just said go ahead.
25 Q. Okay. Do you recall whether you

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1
2 learned of the inspection and the court order
3 permitting the inspection around the time
4 that the court entered that order?

5 A. No idea.

6 Q. Do you recall about when you were
7 informed about the court order of inspection?

8 A. No idea.

9 Q. Did you understand the purpose of
10 the court order regarding the inspection of
11 your studio?

12 A. I assumed that having given --
13 since I had told Mr. Nikas that I had over
14 4,000 works of art, I assumed that the
15 purpose of the inspection was to count the
16 works of art insofar as if I had said to him
17 I have \$4 million in cash that he would want
18 to count it to make sure that it really was
19 \$4 million in cash and not significantly
20 less.

21 So the fact when I told him I had
22 4,000 works of art I was hoping or thinking
23 that I probably had more but I didn't want
24 him to come in and say, oh, I've got 3,820
25 and you cheated me by 180 pieces.

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1 Q. Okay. And -- and who were you told
2 that by?

3 A. By Mr. Markham.

4 Q. Okay. And did you understand that
5 Mr. Nikas' second visit was pursuant to a
6 court order permitting that visit?

7 A. I didn't really get into that.
8 Mr. Markham told me that he was going to come
9 to inspect documents.

10 Q. Okay. And what did you understand
11 that to mean? What did you understand the
12 purpose of that second visit to be?

13 A. Well, if he told me that he was
14 coming to inspect documents, I would assume
15 it meant he was coming to inspect documents.

16 Q. And did you understand that to be
17 documents that would be relevant to this
18 litigation?

19 A. I didn't understand any specific
20 thing other than he was coming to look at
21 documents. I mean, I didn't think he was
22 going to look at documents that related to my
23 tennis. I didn't think that's what was going
24 on.
25

Page 11

1
2 So the purpose, as I thought, would
3 be to count and make a detailed count of
4 everything I had, the size, its dimension,
5 its color, its number, its year, where it's
6 signed, how it got signed, and everything
7 else. That's what I would have done if it
8 were me trying to inspect works of art.

9 MS. ZERNER: Mr. McKenzie, just
10 to -- Michelle was asking you about the
11 second visit. If you could --

12 A. Oh, are you asking about the first
13 visit or the second visit?

14 Q. Thank you for that clarification.
15 I was asking about the second visit
16 but let's -- let's make that clear.

17 So your testimony just now, was
18 that about the first visit that Mr. Nikas
19 made?

20 A. That was about the first visit.

21 Q. Okay. And after the first visit
22 that Mr. Nikas made, you are aware that he
23 made a second visit, is that right?

24 A. Yeah. I was told that they were
25 going to come again, yes.

Page 13

1 Q. So I take it you were told or
2 understood that the documents were related,
3 that he was going to inspect the documents to
4 be related more or less to the matters at
5 issue in this litigation?

6 A. Yes. I can't imagine that it would
7 be anything else.

8 THE EXHIBIT TECH: Ms. Shah, I'm
9 sorry. I apologize for the technical
10 difficulties. I have everything
11 straightened out and we are ready to go.

12 MS. SHAH: Okay. Great. We can
13 hold off on that for just yet and I'll
14 ask you to pull it up in a little bit.

15 THE EXHIBIT TECH: Yes, ma'am.

16 MS. SHAH: Thank you.

17 Q. Are you aware that as a party to
18 this litigation you were required to produce
19 or provide relevant documents and information
20 to Morgan Art Foundation as part of this
21 case?

22 A. After we provided an awful lot of
23 information.
24

25 Q. Can you tell me --

1
2 A. Three other attorneys and workers
3 and subworkers and subcontractors, and I
4 don't recall Morgan doing that.

5 Q. Did you personally look for the
6 documents and information that you provided
7 in this case?

8 A. To some degree. The initial
9 attorneys from Raymond Dowd came up for quite
10 a long time and they went through all the
11 documents. We didn't prevent them from
12 looking at anything. They took whatever they
13 wanted to take.

14 And then they asked to take, if I
15 recollect, they took my computer to do -- to
16 scan it for anything they thought was
17 relevant. And they asked, as well, all of my
18 staff as well as some people that worked for
19 me previously the same. And I think some of
20 the people that I've contracted with did the
21 same. So, yeah, there was quite a few people
22 that provided all sorts of information.

23 THE VIDEOGRAPHER: Off the record
24 at 12:18 p.m.
25 (Off the record.)

1 I don't remember their names offhand to tell
2 you the truth.

3 Q. And those two visits by Mr. Dowd's
4 colleagues, is that the only time that anyone
5 collected documents and information from you
6 for this case?

7 A. No. Because later we were asked to
8 send more documents and we did that. My --
9 as I said, all of my staff was asked to go
10 through their phone and computers and collect
11 that, which they did. And then they asked
12 some of my people that had worked for me that
13 were subcontractors to do the same, and they
14 did the same. I know my painters sent -- I
15 believe sent over a thumb drive.

16 So several people complied with all
17 of the requests. And I personally contacted
18 them to ask them to do that.

19 So did I go there to supervise them
20 doing it? No, I did not. But I did ask them
21 to send anything they felt had any relevance
22 of any kind.

23 Q. And other than the two visits by
24 Mr. Dowd's colleagues up to your Katonah
25

1
2 THE VIDEOGRAPHER: On the record at
3 12:28 p.m.

4 Q. Mr. McKenzie, before we went on a
5 break, you were saying that attorneys from
6 Raymond Dowd came up for quite a long time to
7 collect relevant information and documents,
8 is that right?

9 A. Yes.

10 Q. And when you say came up, do you
11 mean came up to your Katonah residence?

12 A. Yes.

13 Q. Okay. Are you aware whether they
14 went into your studio to collect relevant
15 documents and information?

16 A. Yes. They were in my studio for
17 many hours.

18 Q. Okay. Did you have any personal
19 involvement in collecting documents and
20 information for this case?

21 A. I don't remember how much I was
22 involved. I mean there were other people
23 that were doing it all. The attorneys, Dowd
24 brought up -- he brought up two people for
25 the whole day and I think they came up twice.

1 studio, did anyone else ever go into your
2 studio to collect hardcopy documents or
3 photographs or images or anything else that's
4 contained in the studio?

5 A. I don't remember, but I know people
6 on the staff looked at some point.

7 Q. Do you mean people on your staff?

8 A. Yes.

9 Q. Who are those people?

10 A. I know Annette looked. I can't
11 remember because several people worked here
12 who don't work here anymore, and I don't
13 remember which ones did what.

14 Q. Can you tell me any of their names?

15 A. I can't remember the woman's name
16 who I would say probably would have looked
17 the most because I would have put the, for
18 lack of a better term, the lowest person on
19 the totem pole to do that search. Kate, I
20 can't remember her name to tell you the
21 truth. She had glasses and she worked here
22 for about a year. I just don't remember her
23 name. She is still in publishing, but I
24 can't remember her name.
25

1
2 Q. And when was that that she went to
3 search --

4 A. Right at the beginning of this
5 case, you know, within the first couple of
6 months of the case.

7 Q. Okay. And when was it that Annette
8 went to search in the studio?

9 A. I think on different occasions, to
10 tell you the truth. I'm not -- not sure when
11 she did it last.

12 Q. Can you remember if it was this
13 year? Last year? The year before?

14 A. You know, I didn't get that wrapped
15 up in it. I have other things I do besides
16 look through boxes.

17 So, you know, I know that Dowd was
18 really the one who sent people here to go
19 over everything. And, you know, everybody
20 here I believe helped, what was they needed
21 to look at. You know, they asked to open
22 drawers or look at this or look at a file or
23 open -- I know they also looked at computers
24 while they were here.

25 I didn't really get wrapped up in

1
2 anything else he could think of and his
3 computer and the computer here. I'm assuming
4 that Annette probably did the same thing.

5 I just gave me computer to the
6 attorneys and left it there for them to do
7 whatever they want. I think I gave them my
8 phone as well to search for anything they
9 wanted to search for.

10 Q. Did you ever go into your studio
11 personally and gather up documents from your
12 studio that you thought would be relevant to
13 this case?

14 A. Like I said, that wasn't really my
15 job. That's more of a secretarial thing;
16 that's not what I do.

17 Q. So I take that's a no?

18 A. That's a no.

19 Q. Okay. What is Annette's last name?

20 A. Vessecchia, V-E-S-S-E-C-C-I-A.

21 Q. AND where does she live?

22 A. She lives in Bedford, the adjacent
23 town to here.

24 Q. Okay. Do you have her contact
25 information? Could you tell me it on this

1
2 it. I know that they were here for quite a
3 long time. I think they came at, like, 9:00
4 in the morning and left, you know, fairly
5 late, 5:00, 6:00.

6 Q. And this is during one of the one
7 or two visits by Mr. Dowd's colleagues that
8 you referenced before, correct?

9 A. Yes. Yes.

10 Q. Other than the one or two visits by
11 Mr. Dowd's colleagues and the times that
12 Annette may have searched or Kate, whose name
13 you can't remember, may have searched the
14 studio, did you or anyone else at any point
15 in time ever go search the studio for
16 relevant documents or information?

17 A. I'm not sure. I think -- I think
18 there were other times that people looked for
19 things if they were requested, so we looked
20 for them.

21 Q. Okay. Can you give me anyone
22 else's name who helped you with that?

23 A. Well, probably everyone who worked
24 in the studio. I know Tim went -- Tim Ginexi
25 went through all of his phones and emails and

1
2 deposition or have your attorneys provide it
3 to me after the deposition?

4 A. Yeah. They'll provide it to you.

5 Q. And by contact information, I mean
6 phone number, address and email?

7 MS. ZERNER: Yes --

8 A. I don't have -- yeah. I don't her
9 address. I don't know what you need that
10 for, but I will give you her -- her email and
11 phone, which I do have.

12 Q. Okay. Does she still work for you?

13 A. Yes.

14 Q. How long has she worked for you?

15 A. Eleven years.

16 Q. What does she do for you?

17 A. She does a lot of IT work. She
18 does design work, phone calls, sets up
19 meetings, all sorts of things.

20 Q. Does she help at all with the
21 fabrication, production, conception,
22 distribution, sale of Indiana works?

23 A. To some degree she works on the
24 creation of it. So, you know, if we were to
25 do a piece, she would be involved in making

1
2 the matrix for it because she is, you know,
3 one of our top IT people so she'll help
4 create the plates. I don't know if that
5 makes any sense.

6 Q. Does she help do the printing or
7 the stencilling or anything like that?

8 A. She will create the stencil; that's
9 what she does. She will create what are
10 called the plates. Printing isn't really her
11 thing.

12 Q. Can you describe to me how she goes
13 about creating the plates?

14 A. Well, as an example, if we were
15 going to do HOPE and we were going to do it
16 in two colors, she would go on the computer
17 and figure out how to get the word HOPE out
18 of the picture, so it was just by itself as a
19 black and white, and then she would make a
20 background that coupled with it so that they
21 would go on top of each other and it could be
22 printed. You know, the machine then takes
23 whatever it is she created to print it.

24 Q. Does she help create the Indiana
25 insignia that is sometimes stamped on the

1 do it, because she actually went up and met
2 with Indiana early on. And then he showed us
3 how to do the stencil, what he wanted on the
4 stencil, what it had to look like, what color
5 it had to be, all these things.

6 Q. Okay. And as part of stencil, is
7 it also stamped with the year of creation?

8 A. Yes. And Bob, every year, would
9 change that number so we've stuck with that
10 idea.

11 Q. And when I say the year of
12 creation, I mean the year of creation of the
13 work that is stamped with his insignia, is
14 that correct?

15 A. The way -- no, it isn't. The way
16 it works is, as an example with your LOVE
17 stuff, they have the year that it was first
18 created is stamped on to your -- on to your
19 sculpture.

20 So with the paintings, it's the
21 year that it was first created. So if we do
22 an edition of, say, 11, sometimes we don't do
23 all 11. We may have not wanted to have that
24 much laying around so maybe we did two.

1 back of the verso of the works?

2 A. Yeah. Indiana -- I was of the
3 impression that Indiana signed his paintings
4 with a pencil, and he corrected me to say
5 that no, that's not what he wanted to do. He
6 wanted to use a stencil and showed me that,
7 indeed, he had been using stencils on the
8 back of his paintings since 1958.

9 So, you know, the artist has --
10 always has the right to decide how something
11 gets signed. I wasn't especially happy about
12 it, but he gave us the matrix for the
13 stencil.

14 We made the stencil, we gave him
15 prints of the stencil, he approved it, and
16 that was how we then signed the paintings as
17 his direction.

18 Q. Okay. And is Annette involved in
19 creating the matrix for the stencil or
20 applying the stencil on the verso of the
21 works?

22 A. Yes. She creates the matrix but
23 she creates the matrix for the stencil and
24 she's -- she is the one we kind of trust to
25

1 So if we did two and the year was
2 1912 -- 2012, when you finished that edition,
3 you have to use the 2012, not 2017 or '18 or
4 whenever you did it. Does that make sense?

5 Q. It does. Thank you.

6 And how about silk screen prints?
7 What was the practice for the date on the
8 stencil or insignia that is stamped on the
9 verso of the prints?

10 A. Well, silk screen prints don't get
11 stenciled. They get hand signed.

12 So the way Indiana broke down his
13 art was that he wanted to pencil sign paper
14 and stencil sign canvas. Took me a while to
15 really wrap my head around that because -- I
16 have worked with a hundred artists. I never
17 encountered something like that before.

18 At the beginning of this project,
19 we had him hand signing the paintings. And
20 then he one day just said, You know what? As
21 soon as I hand sign it, you devalue the
22 paint.

23 Like I had never heard of anything
24 like this, and he pretty much demanded that
25

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1 we go into stencils.

2 Q. Okay. And for the stencils on the
3 back of the paintings, the date that is
4 stamped on that, is that the year of creation
5 or what is the custom for that?

6 A. I think I just explained to you
7 that whenever you first start the edition,
8 that's the year that it began. But if you do
9 it -- if you don't finish the edition,
10 which -- which with paintings oftentimes we
11 don't, you have to, when you finish the
12 edition, the year will be the year that the
13 edition was begun, not the year that you did
14 it three years later or two years later or
15 the next year.

16 Q. So you are then talking about
17 editioned paintings?

18 A. Yes.

19 Q. Okay. And those are printed or
20 silk screened on canvas?

21 A. Yes, silk screened.

22 Q. Okay. And you mentioned a Kate
23 earlier who worked for you for about a year,
24 and you didn't remember her last name.
25

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1 where I want you to look.

2 Q. Can you see this document in front
3 of you?

4 A. Yes.

5 Q. For the record, this is an order
6 from the court dated 6/29/21. It's Doc 395
7 we've marked as Exhibit 1.

8 Mr. McKenzie, have you seen this
9 document before?

10 A. Probably.

11 Q. Okay. And down on paragraph 3 on
12 the first page it says, "Inspection of
13 McKenzie's studio."

14 Do you see that?

15 A. Yes.

16 Q. And you are aware that the second
17 visit by Mr. Nikas and his colleagues that we
18 were speaking about earlier to your studio,
19 that that was done pursuant to this court's
20 order, is that correct?

21 A. No. I don't know if that's true.
22 I think that was the second thing. This
23 doesn't seem to cover that at all.

24 Q. Can you explain to me what you mean
25

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1 Do you recall if it was Kate
2 Cerciello (phonetic) or Kate Casey?

3 A. Ah, that's it. Kate Cerciello.

4 Q. You mentioned Tim Ginexi. Who is
5 he?

6 A. He is our printer. He is our
7 master printer.

8 Q. Where does he live?

9 A. Wappingers Falls.

10 Q. In New York?

11 A. Yeah. It's probably 20 minutes
12 from here or so.

13 Q. Okay. And I'd ask also for his
14 contact information if you have it and can
15 provide it to your lawyers to provide to me
16 after the deposition.

17 A. Of course. No problem.

18 Q. Thank you.

19 MS. SHAH: If we could now pull up
20 tab 3, which is Exhibit 1, please.

21 And Mr. McKenzie, I think you also
22 have a copy of that in the chat so feel
23 free to pull that up. But I can direct
24 you on the screen if you can see it to
25

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1 by that?

2 A. Exactly what I said is exactly what
3 I mean. That this seems to talk about a
4 meeting, not a meeting and a second meeting.
5 I don't see anything here that says there
6 will also be a second inspection. Do you see
7 that? Because I don't.

8 Q. Okay. Do you understand that the
9 first inspection that Mr. Nikas did was just
10 pursuant to an agreement between him and you
11 and some other parties, but it was not a
12 court-ordered inspection?

13 A. Yeah. I think I -- I agreed to do
14 it without a court order. I just said come
15 on -- come on down.

16 Q. Yes.

17 A. Right?

18 Q. Yes. And then the second visit or
19 inspection that Mr. Nikas did, do you
20 understand that that was done because the
21 court ordered that Mr. Nikas could do it?

22 A. Is that what this is?

23 Q. Yes.

24 A. Oh, so I thought this was for the
25

1 first one; so I don't know. I'm not that --
2 you know, if Mr. Markham tells me that he
3 wants somebody to come over, I'm not studying
4 the documents to find a way out. You know,
5 whatever he says I'm going to do.

6 So I'm not going through documents
7 with a fine tooth comb to find out if there
8 is something in there that contradicts what
9 Mr. Markham says. I kind of go by what he
10 asks me to do.

11 Q. I understand. So let me ask it a
12 different way.

13 Did you understand from Mr. Markham
14 that Mr. Nikas was going to come inspect the
15 studio because the court had ordered that
16 he'd be able to do that?

17 A. I guess so. If he asked me to have
18 Mr. Nikas over even at the beginning, I
19 didn't ask is there is a court order. I just
20 said yes.

21 Q. Do you recall if Mr. Markham or
22 anyone else ever informed you that there was,
23 in fact, a court order?

24 A. I don't recall. It wouldn't have
25

1 here. I let other people do it. Everything
2 I know about it I'm hearing secondhand.

3 Q. Okay. And everything you know
4 about it, are you hearing secondhand from
5 your attorneys or someone else?

6 A. Both. From the people that were
7 here, you know, mainly from Annette and then
8 whatever -- I don't know. I think
9 Mr. Markham was here too if I remember.
10 Again, I wasn't here so it's hard for me to
11 really tell you what transpired. I wasn't
12 here.

13 Q. Okay.

14 MS. SHAH: We can pull that exhibit
15 down, Broderick.

16 Q. Mr. McKenzie, are you aware that
17 Mr. Markham wrote a letter to the court on
18 August 30, I believe, informing the court
19 that had you moved some artwork off the
20 property before this second inspection?

21 A. Yes.

22 Q. Do you understand that that letter
23 from Mr. Markham is among one of the reasons
24 that we are here at this deposition today?
25

1 mattered to me one way or the other.

2 Q. Okay. Did you do anything to
3 prepare for this -- sorry. Let me back up a
4 minute.

5 I want to talk to you about the
6 inspection next and ask some questions. And
7 just to lay the groundwork, I would like you
8 to understand that I'm going to be talking
9 only about the second inspection -- the
10 second inspection, okay?

11 A. Okay.

12 Q. That second visit happened on
13 August 5, okay?

14 A. Okay.

15 Q. So did you do anything to prepare
16 for that second inspection?

17 A. I think they bought bagels and
18 cream cheese and coffee. That's all I can
19 remember.

20 I wasn't here. You know, I
21 specifically didn't want to be here for any
22 of the reasons, that I didn't feel like
23 getting into a confrontation with anybody.
24 So I didn't think it was prudent for me to be
25

1 A. Whatever; I don't know.

2 Q. Can you tell me, is it correct that
3 you moved artwork off of the property before
4 Mr. Nikas' second inspection?

5 A. I had no idea there was going to be
6 a second inspection. Nobody told me that
7 there would be.

8 I mean, you had eight people here
9 for ten hours. I could have gone through
10 everything here with Annette in five hours
11 with two people.

12 You had eight people here for ten
13 hours. I assume you went through everything,
14 had a full list of everything that was here,
15 pictures of everything that was here, the
16 size, their gate, the number, and then
17 compared that to whatever I gave you so that
18 you wouldn't then turn around and say there
19 are 300 more pieces than you said or 22
20 pieces less than you said or whatever.

21 That's what I thought was
22 happening. Nobody ever got to the point of
23 telling me I had -- the only thing I was told
24 was that they thought I had far too much
25

1
2 inventory, which I found really strange given
3 that you're making money from the inventory.

4 Q. So let me take this one step at a
5 time.

6 Is it your testimony -- first, I
7 guess, let's do a yes-or-no question, if you
8 can answer it with a yes or no.

9 Is it correct that you moved
10 artwork off of the property before Mr. Nikas'
11 second visit?

12 A. As I said, I -- no one told me
13 there would be a second visit. So I moved
14 things off the premises because after,
15 theoretically, you guys were going to buy
16 everything, I realized that it was impossible
17 or very difficult to see everything here
18 because it was stacked up on top of each
19 other just for lack of space.

20 So I started moving things so
21 that -- and it's much better in the space
22 that it's in to view. Viewing things here,
23 much more difficult. Viewing things there,
24 very, very simple.

25 So I was trying to set it up to

1
2 around for so long. But when the estate or
3 whomever is trying to buy the work, it
4 stimulates what am I doing.

5 And when I did that, I realized I
6 was keeping all this stuff in the wrong
7 place. It was costing me more money to keep
8 it here than put it somewhere else. It
9 wasn't being protected as well, and it also
10 opened up all of my space here. Instead of
11 having to crawl around thousands of works of
12 art where I can't even move in my own studio,
13 it opens up the studio to really be able to
14 work here a lot better and my home too. So
15 it was nothing but plus from my standpoint,
16 moving.

17 Q. So is it your testimony that when
18 you moved the artwork off the property you
19 did not yet know about a second inspection?

20 A. I had no idea there would ever be a
21 second inspection. It seemed to me that
22 80 hours of inspecting was probably five
23 times as much as would have been needed to
24 inspect it.

25 Q. And when you were informed of the

1
2 finish a sale and also, frankly, I've had a
3 number of trees fall down on this property,
4 even recently. And it occurred to me that I
5 had trees within 20 feet of this building,
6 that if they fell down, this building would
7 be crushed like a grape. And, in fact, I
8 just took two of them down a couple of weeks
9 ago.

10 So moving it to the -- when I saw
11 the facility, I realized I was keeping
12 valuable art in a space that maybe, maybe not
13 was up to the task; whereas, the space that I
14 viewed was brand new, made out of steel, no
15 trees, anything around it that could damage
16 the building and art. It was temperature
17 controlled I felt better than my own
18 temperature controls. It was humidity
19 controlled I felt better than my own humidity
20 control. And also, the value of my property
21 compared to the value of the storage space,
22 the property is much more valuable.

23 So on every level, I was making a
24 mistake to keep it here. I hadn't really
25 thought about it because it was sitting

1
2 second inspection by your attorneys, did you
3 tell them at that point that you had moved
4 artwork off the property?

5 A. I was told they were only coming to
6 look at documents.

7 Q. Okay. And so is that a no, you did
8 not tell them that you had moved artwork off
9 the property?

10 A. It had no relevance because if
11 you're coming to look at documents, I didn't
12 move any documents. They were all here.

13 Q. So am I correct, that you did not
14 tell them that you had moved artwork off the
15 property?

16 A. Well, you're correct in knowing
17 that it had no relevance to the question they
18 asked and the question you're asking.

19 Q. Okay. Regardless of whether it had
20 relevance or not, I'm just trying to get a
21 clear transcript.

22 Did you or did you not --

23 A. You have a clear transcript. There
24 was no reason to tell them that.

25 Q. Okay. Do you recall when you moved

1 the artwork off the property?

2 A. I would say shortly after the first
3 visit because, you know, I started really
4 realizing that I can't even walk in this
5 place. You know, and that when I talked to
6 Annette, she said, you know, they went
7 upstairs, downstairs, here, there, and
8 whatever. I don't know what they were
9 looking for.

10 And then you start looking around
11 and you realize it's -- you know, I have very
12 valuable space. Bedford is a -- is a prime
13 time part of Westchester, and I'm tying if up
14 with storage. It's not a really very
15 intelligent thing to do.

16 So I started looking around to see
17 if I went within an hour, an hour and a half
18 of here, rather than try to do it here where
19 everything is super expensive, am I better
20 off, you know, being somewhere elsewhere
21 with -- my concern was going outside of here,
22 which is very expensive, that I would go
23 somewhere else but it would be a horrible
24 facility. That was my scare.

1 I was putting on the art, for what? To save
2 a couple of thousand dollars? When, in fact,
3 the space I have is probably worth quadruple
4 that. So there was just no good reason to
5 keep it here.

6 What -- you know, I had really not
7 thought about moving it until all of a sudden
8 it got pushed, like maybe -- maybe this will
9 get sold in one shot. And I said, well, now
10 what? What if -- what if a tree comes down
11 and destroys the building and I've agreed to
12 sell this stuff and now it's all destroyed?
13 Am I -- what -- what happens to me? And now
14 I'm liable for -- it was just too much
15 liability and we've -- I never really faced
16 that before. But it was in my face once it
17 came time to think of maybe I have to sell
18 this stuff in one shot.

19 Q. Do you recall about how long after
20 the first visit it was that you moved the
21 works off the property?

22 A. It was very short time because,
23 like, as soon as I started looking at
24 everything, I realized I was making a huge

1 But when I went into what I'm going
2 to call the hinterlands, which is, you know,
3 an hour or so away from here, I realized that
4 there were brand new storage facilities that
5 were built much better than the storage
6 facilities here. I didn't know realize that.
7 I didn't know if that would be the case.

8 But when I looked and inspected
9 storage spaces elsewhere, it was abundantly
10 clear to me that me using my storage space
11 here that, one, it was nowhere near as good;
12 two, it was nowhere near as well protected;
13 three, it didn't, while I have a kind of
14 loosely put together temperature and humidity
15 control, it's nothing like the professional
16 controls in these storage spaces; and four,
17 you know, the -- I have a vulnerable space.

18 You know, there's animals around
19 here. It's an old farm. You know, there's
20 raccoons. There's coyotes. God forbid you
21 leave the door open for a minute and
22 something like that gets in or when they
23 break a window and get in.

24 So when I looked at the liabilities

1 mistake to leave stuff here. And, frankly,
2 space in my house that I was giving up was
3 worth a lot of money, and I was thinking that
4 I would make a separate and, I am entitled to
5 under Bedford code, to make a separate in-law
6 apartment for my children.

7 So every single thing that I could
8 think of that would be positive or negative
9 came up negative leaving it there, positive
10 moving it. So the only question I had was,
11 was there a facility that was affordable?
12 And the answer was that they were very
13 affordable.

14 And then the second question was,
15 was that facility up to the task of having
16 temperature and humidity controls? And what
17 I found out was that these -- these brand-new
18 facilities in these far-off places were much,
19 much better than my facility. Much, much
20 better.

21 Q. What's the name of the facility
22 that you moved the works to?

23 A. Honestly, I don't know the name.
24 It's in Middletown, New York, and it's a

1
2 brand-new facility. And it's -- it's got
3 unbelievable amount of security and cameras
4 all over the place, and people working there.
5 And, you know, the temperature and humidity
6 controls are backed by generators. It just
7 was a truly fine facility. Much, much better
8 than what I had provided. It made my
9 facility, I realized how -- how weak my
10 facility was.

11 Q. Do you have records of -- that
12 would say the name of the facility?

13 A. Yes.

14 Q. Do you have records that would say
15 the date that you moved it to the facility?

16 A. I'm not sure about that because we
17 moved it in stages. You know, at the
18 beginning, I moved in and they allowed me to
19 come in until sometime when I got the rest --
20 some of the rest of the things in. So I'm
21 not sure that they have the first date; I'm
22 sure they have some date.

23 Q. Is it your testimony that you moved
24 the work into the facility at different
25 dates, at different times?

1
2 can't possibly think about moving it in a
3 day. It's not humanly possible.

4 Q. How many works did you move from
5 the -- from your studio in Katonah to the
6 storage facility?

7 A. I didn't count them. I don't know.

8 Q. Do you have an inventory that shows
9 how many works you would have stored in the
10 storage facility?

11 A. It's -- the problem with our
12 inventory is that different people worked on
13 it at different times, and there are pieces
14 missing that were either -- you know, sold or
15 Rosenbaum has them or whatever else. So when
16 we look at our inventory, we are not sure
17 that what we have in inventory in the list is
18 what we actually have. So trying to count it
19 all over again as to compared to what we have
20 as notes is a time-consuming thing, which we
21 really haven't done to the max like we
22 should.

23 I thought that that -- one of the
24 things I thought in your team coming was,
25 good, let them go count 4,000 pieces and tell

1
2 A. Yeah. You couldn't move it all --
3 unless you had a freight train, you couldn't
4 move it all in one shot. You know, it's --
5 you are talking about 16 -- you know, my
6 studio here is 7,000 square feet. You can't
7 get -- and the ceiling height upstairs is 23
8 feet.

9 You can't get that amount of
10 storage space. It's not possible, because
11 storage spaces are 8-by-20, or something like
12 that. So you can only get -- and where are
13 you going to get a truck to take 1600 square
14 feet? I mean, I don't know where you get
15 that.

16 You can only get a truck that is so
17 big, and it can only take so much. So it had
18 to be done in stages. And if I'm driving, it
19 takes me a few hours to load. You know,
20 you've got to be careful. You're moving art.
21 It's not like you are moving bowling balls.

22 So loading up takes time. And
23 then, to get there is an hour and 10 minutes
24 and then unloading takes time. So you can
25 really only do one truckload a day. You

1
2 us what they are, how they got there, what
3 the colors are, what the numbers are and all
4 that, and then we can compare it against our
5 notes, because it's a -- you know, it's a
6 16-, 18-hour job to do, and we just never did
7 it.

8 Q. Do you think it's about 4,000 works
9 of art that you moved from your studio to the
10 storage facility?

11 A. No. Because we still have probably
12 maybe a third of it here.

13 Q. So you think it's about 2500 works
14 of art that you moved to the storage
15 facility?

16 A. Again, that's my guess. But again,
17 I didn't try to count it because sometimes
18 pieces that take up a lot of space -- you
19 know, you could have pieces like, for
20 instance, prints that are stacked up where
21 400 prints are only taking up an area that is
22 4 inches high; whereas, something else that
23 is a giant painting is just one piece but
24 takes up 8 feet by 8 feet by 4 inches deep.
25 So there is no real formula.

1
2 I mean, each thing is -- it's a
3 work of art. It has its own space and time.
4 You know? So I didn't -- I'm not sure. But
5 if I had to guess, a third of it is here and
6 two-thirds is there. I'm not positive.

7 Q. Okay. And if you could give me
8 your best guess of the numbers, would it be
9 about 2500 in the storage facility and about
10 a 1,000 or 1500 remaining at your Katonah
11 studio?

12 A. Yeah. If you take a third and
13 two-thirds, that's what it is, and that's a
14 guess. And I'm -- I would say that's
15 accurate within 10 or 15 percent; at least
16 that's what I think.

17 Q. Okay. Did you do -- did you or the
18 storage facility do anything to record what
19 specific pieces of art you moved to the
20 storage facility? Do you have a storage
21 inventory?

22 A. No.

23 Q. Do you have any records showing
24 what specific pieces you moved to the storage
25 facility?

1 correct?

2 A. Yes.

3 Q. And Tim Ginexi?

4 A. Yes.

5 Q. And Oz Gonzalez?

6 A. Yes.

7 Q. And how many other people do you
8 think you -- helped you do that, that you
9 employed who do construction projects?

10 A. It was mainly those three. You
11 know, the other people didn't go to the
12 storage facility. They may have helped me
13 take some of the work out of the -- out of
14 the space but that was about it.

15 Q. Do you remember about how many
16 other people that would have been?

17 A. I think two.

18 Q. Do you recall their names?

19 A. I don't. They were kind of day
20 laborers. I don't really know them. They
21 were people that knew Osvaldo Gonzalez.

22 Q. How many trips did it take you to
23 drive the works to the storage facility?

24 A. I didn't count them, to be honest
25

1
2 A. No. We just tried to do a
3 truckload -- it was a very time-consuming
4 job. And -- and it's also nerve wracking
5 because, you know, every work of art you
6 move, you know, you're trying to figure out
7 how to stack it on the truck. You're hoping
8 it doesn't break. I mean, you've got a
9 thousand things -- you're wrapping it as best
10 you can.

11 You know, I'm not a professional
12 art mover. We didn't employ professional art
13 movers. We did it ourselves. And, you know,
14 it wasn't -- wasn't so easy and it wasn't so
15 much fun. It was very time consuming and
16 very nerve wracking.

17 Q. Who helped you pack up and move the
18 works to the storage facility?

19 A. Everyone who was here on the staff;
20 Annette, Tim, Oz Gonzalez. I think I
21 employed a couple of other people that do
22 construction work for me to help. I'm trying
23 to think if anybody else helped. I think
24 that's it.

25 Q. That's Annette Vessecchia, is that

1 with you, but it was quite a while of time.
2 You know, maybe two weeks and going, if not
3 every day, sometimes even on weekends. It
4 took a lot of trips.

5 You know, if you have a -- like,
6 the trucks, the biggest truck you can get is,
7 like, 20 feet or something, but you can't
8 always get it. So if you get a truck
9 that's 12 feet and it's 7 feet wide, it's not
10 a lot of stuff that we can take. And you can
11 only get whatever trucks are available. I
12 don't own a 40-foot truck, so I'm at the, you
13 know, the disposal of Avis and the other
14 truck companies. So...

15 Q. So you rented the trucks?

16 A. Yeah. And apparently the trucks
17 are in high demand right now. At least
18 that's what they tell me because I would call
19 up and, you know, apparently there is a huge
20 amount of people moving. You know, you have
21 an influx of people moving from the five
22 boroughs up to this area, and then you have
23 an outflux of people in this area who are
24 getting double what they thought they would
25

1
2 get for their home and moving to Tennessee
3 and North Carolina, so there is a lot of
4 trucks going out here.

5 Q. Do you have records of the truck
6 rentals? Receipts, anything like that?

7 A. I'm not sure. I'd have to -- I
8 don't really save those things.

9 Q. Where did you rent the trucks from?

10 A. Whoever had them. I rented it from
11 anyplace that could give it to me. There
12 were probably three different places that I
13 rented from all within, you know, this area.

14 Q. Did you do it online or over the
15 phone?

16 A. Over the phone.

17 Q. What records do you have that would
18 show the name of the storage facility?

19 A. I'm sure I have that -- that
20 record, is my bookkeeper has that I'm sure.

21 Q. Okay. We're going to ask for the
22 production of that, please, and any other
23 records you have from the storage facility or
24 showing an inventory of the works that were
25 moved.

1 trademark or copyright to LOVE so that's a
2 story that's got to stop.

3 Q. Well, that's not my question.

4 My question is just did you move
5 any LOVE works to the storage facility?

6 A. Possible. You know, I didn't -- I
7 didn't try to -- you know, whatever was
8 taking up space that I needed is what I
9 moved. So I tried to move anything that
10 would give me a chance to work in my own
11 studio and/or live in my own house.

12 So I moved anything that I -- that
13 I thought I could fit in a truck and anything
14 I thought I could fit in a locker or whatever
15 they call those things, a storage space.

16 Q. Do you recall if you moved any Book
17 of Love works to the storage space?

18 A. I only have maybe two or three of
19 them; they're probably still here.

20 Q. What about Dylan works, do you
21 recall if you moved any of the works with
22 Bob Dylan lyrics on them to the storage
23 space?

24 A. I'm pretty sure that we did. I
25

1
2 A. I don't have any -- like I said for
3 the fortieth time, I don't have an inventory
4 of what was moved.

5 Q. Okay --

6 A. You can ask me 500 other ways but
7 the answer will remain the same.

8 Q. I am also going to ask for the
9 production of any receipts you have from the
10 truck rental that would show the dates that
11 you rented the trucks.

12 A. I also own my own truck, by the
13 way.

14 Q. Did you use that truck to move --

15 A. Yes, I did.

16 Q. Okay. Can you describe for me, to
17 the best of your recollection, what were the
18 works or the images -- the images on the
19 works that you moved to the storage facility?

20 A. We moved anything that fit in the
21 truck; so any of the works that we had, we
22 moved.

23 Q. Did that include LOVE works?

24 A. I'm not sure. Maybe. Think of
25 what LOVE works we had. But we don't own the

1 mean, the Bob Dylan books were very -- taking
2 up a huge amount of space and they were heavy
3 and in the way, and I'm sure that was one of
4 the things that I moved first.

5 Q. About what about any works with the
6 word EAT on them, E-A-T?

7 A. I don't know that we had any. But
8 if we did, we probably moved them.

9 Q. Okay. What about any works with
10 the words USA FUN on them?

11 A. Again, I'm not sure that we had --
12 you know, we may have had a couple, and if we
13 did, we probably moved them.

14 Q. What about works with the word ART,
15 A-R-T, on it?

16 A. I'm sure we moved at least some of
17 them. I don't know that we have that many.

18 Q. What about HOPE works?

19 A. Yeah. We moved a lot of them.
20 There were a lot of them and we moved a lot
21 of them.

22 Q. What about works with the word
23 Tikva, T-I-K-V-A?

24 A. I'm not sure that we have any of
25

those, but they may all be with Rosenbaum.

Q. Okay. What about works with the word Ahava?

A. We never did -- Ahava, I did publish many years ago. I don't think we have any though.

Q. Okay. What about alphabet works?

A. Yes. We -- we moved several of those.

Q. Are there any other Indiana works that you can recall that you moved to the storage locker?

A. I think there was a piece called "Retrospective" that we moved that was really in the way, too. And I don't know. You know, I didn't -- again, I am doing it by memory and it was a long haul. I can't remember if there is anything else besides what you mentioned that we would have moved. I don't know if we have anything else besides what you mentioned. I'm trying to think of anything. Nothing is jumping to my mind.

Q. Did you move prints and paintings?

A. Yes.

somebody who gives me a good idea of how to store it, I am going to keep it covered.

Q. So it's been covered over with a tarp for the past few months until today, is that right?

A. Still covered over as we speak.

Q. Other than the paintings and prints that we've discussed that you moved to the storage facility, did you move anything else to the storage facility?

A. Yes. I moved Alex Katz. I had a number of large Alex Katz paintings, a number of Robert Cottingham paintings, a number of my own paintings, a number of Donald Sultan paintings, a number of prints from Ronnie Cutrone, a number of prints from Crash, paintings from Ron English, paintings from Dan Witz, paintings from Iko, paintings from Tristan Eaton, prints from Tristan Eaton. I moved anything that was in the way that was tying up my space.

Q. Okay. Other than the paintings and prints that you just described, did you move anything else to the storage facility?

Q. Did you move any sculptures?

A. No. I don't think we have any. Those are kind of made as they are ordered.

Q. Do you have a stainless steel HOPE sculpture on your property?

A. We believe that Osvaldo Gonzalez is trying to steal that.

Q. Did you cover over the HOPE sculpture with a tarp that's on your property?

A. Yes. It's -- it's in need of repair. It has to be -- unfortunately, it has to be resurfaced or whatever they do. It's rusting.

Q. When did you cover it over with a tarp?

A. A couple months ago.

Q. Do you recall if it was covered over with a tarp during Mr. Nikas' second visit?

A. It's still covered over with a tarp. You know, it's -- the rain is killing it and it's rusting like mad and I don't want to see it fall apart. And until I can locate

A. Not that I can think of.

Q. Did you move any documents to the storage facility?

A. No.

Q. Did you move any photographs to the storage facility?

A. No.

Q. Is the storage facility rental under your name?

A. Yes.

Q. Michael McKenzie?

A. That's my name.

Q. Did you rent the storage facility -- well, can you tell me when you -- when you rented the space in the storage facility?

A. I don't -- it was shortly after, whenever the first meeting was. It took me a while to figure out where I wanted to go with it because I -- I went to three or four storage facilities around to see what would click. And when I visited this one, I realized that -- that it would work. So I don't remember how long it took, but it would

1
2 have been not too much longer after the --
3 when was the first meeting?

4 Q. You mean Mr. Nikas' first visit up
5 to your studio?

6 A. Yes.

7 Q. Okay. I don't -- I don't know the
8 date off the top of my head.

9 A. I don't either. But, so shortly
10 after that, I realized that my facility was
11 not a great idea for what I was trying to do.
12 It didn't make any sense. That even trying
13 to look at the work to sell it made no sense
14 whatsoever because -- it was just everything
15 was on top of itself.

16 So to look at ten paintings of HOPE
17 you had to move 15 paintings of Alex Katz.
18 It didn't make sense.

19 Q. Can you tell me the names of
20 everyone who you are aware of that knows that
21 you moved those works to the storage
22 facility?

23 A. Well, I told you the names of all
24 the -- all the people that worked to move it
25 are all the people that know about it.

1 know, they're not that sophisticated.

2 Q. Okay. And you never apprised
3 Morgan or its attorneys that you had moved
4 art off the property before the second
5 inspection, is that correct?

6 A. This is, what, the ninth time I'm
7 telling you I didn't think it was anybody's
8 business.

9 Q. Okay.

10 A. And that's -- that's where it's at.
11 You know, it has nothing to do with anything.
12 I'm not telling you what I had for lunch
13 either because it's not your business.

14 Q. Were Annette and Tim present during
15 the second inspection by Mr. Nikas?

16 A. You know, I wasn't here so my -- I
17 know Annette was here because she told me
18 that she was surprised that nobody -- we were
19 waiting for somebody to say, This is a list
20 of everything we found and you told us you
21 had 4,000 pieces. We found 4600 or we found
22 3600.

23 And that's what we thought was
24 going to happen and Annette too. She was
25

1 Q. Okay.

2 A. And I'm not -- not standing on my
3 roof saying does anybody want to know where
4 my storage facility is. You know -- I'm not
5 trying to broadcast where I'm keeping
6 valuable art. It wouldn't be very smart. So
7 I'm not particularly interested in letting
8 everybody know where I'm keeping things. Why
9 would I?

10 Q. Okay. So putting aside the people
11 on this call -- your lawyers, the court,
12 et cetera, you know, the people involved in
13 this deposition and lawsuit, other than
14 Annette, Tim, Oz Gonzalez, and the couple of
15 construction workers that might have helped
16 you pack up stuff -- is there anyone else who
17 knows that you moved the works to the storage
18 locker?

19 A. No. And I don't think the
20 construction workers have any idea. They
21 just -- were just moving a few things out of
22 a barn. I don't think they had any idea
23 where it was going, why it was going or
24 even -- if they even knew it was art. You
25

1 waiting to see a list that -- that somebody
2 would try to get her to confirm and then get
3 me to confirm that you told us you had this
4 but this is what we found.

5 But we -- we never -- nobody ever
6 gave us that. No one ever came back with a
7 list and said, Look, you told us you had
8 4,000 works of art.

9 You know, some of these pieces sold
10 for a couple of \$100,000, so we are talking
11 about a substantial amount of money. But
12 nobody counted the art. Nobody counted it.
13 Nobody came back and said, This is how many
14 pieces you have or this is how many --
15 because we were waiting for that.

16 It would have been good for us to
17 have because we didn't even know how many
18 pieces we had. So if eight people want to
19 stay here for ten hours and count pieces,
20 great, count them; but that never happened.
21 Nobody came back to us and said, You have
22 1200 pieces, 12,000 pieces, you have
23 892 pieces of this. Nothing.

24 There was no list ever came back to
25

us to -- to check on, which is very, very strange that eight people were here for ten hours and they compiled no list.

Q. Are you aware of whether Annette -- (audio distortion) -- are you aware of whether Annette Vessecchia told Morgan Art Foundation or its attorneys that a number of works had been moved off the property before the second inspection?

A. Again, that wouldn't have anything to do with what they were doing. Apparently, they were looking at documents, so I don't see any reason why she -- they didn't ask, she didn't tell. There was to reason to even have that discussion.

They had 80 hours of manpower to look at it. We assumed they -- they had a list and they just -- we also assumed they weren't showing us or didn't want to show us the list, and we didn't know why.

And why would you go there with eight people for ten hours to check out a list of everything is -- that's in the space and not go piece by piece and check the list,

screens into my house.

(Simultaneous crosstalk.)

A. -- blank silk screens are blank. You know, we blast these screens out and move them around all the time. It's -- you know, you finish it, you blast it. Or sometimes you finish it, you don't want to blast it because you may use it again.

So -- but I don't move any silk screens into my house ever because they're -- they stay in the studio. Sometimes we put them outside if we don't have the space.

Q. Before Mr. Nikas' second visit, did you move anything else out of the studio?

A. I can't think of anything.

Q. Before Mr. Nikas' second visit, did you move anything out of the studio into your house?

A. No, not that I can think of. I mean, unless there was a book here I needed. You know, sometimes there is something here; because when you go through everything, there is so much stuff here. You know, I may have found a Picasso that I forgot I had. You

make sure that the number -- if I say there's 4,000 pieces -- if I told you there was \$4 million and it was in a suitcase and it was in thousand dollar bills, you would count it. That's just what you would do.

So here is a thing that has \$50 million worth of art, or whatever it is. Aren't you going to count it? Aren't you going to, like, document it? And say, Look, you said you had 4,000 pieces. We only count 2200.

Or, you know what, you said you had 4,000 pieces. We counted 7,000.

Where was that? How come -- how come we didn't get a list of what they spent eight people ten hours to go over the list but nobody came back with a list? What is that about?

Q. Before Mr. Nikas' second visit to your studio, did you also move blank silk screens from the studio into your house?

A. Blank silk screens?

Q. Uh-huh.

A. No. I didn't move any blank silk

know, if I did that, I would put it up on the wall. Or if it was something special to me.

It's like when you start going through everything, you start seeing things that you forgot you even had. I don't remember if I found anything that I forgot I even had but that does happen from time to time; that I find something that, you know, I have sentimental attachment to for one reason or another from an artist I knew very well who is now passed on and I want to get it up and remember him.

I'm an art collector and an art publisher. I have thousands of works of art besides the Robert Indiana of all kinds of artists that I worked with over the last 40 years. You know, there's -- you know, those times that I spent with Picasso. Those are important moments in my life. Times that I spent with Andy Warhol, important moments in my life.

And I have a lot of Andy Warhol and it pops up from time to time, that I have something that I forgot I even had. I'm

1
2 looking at one right now that I forgot I even
3 had.

4 Q. Since the beginning of this
5 litigation, have you moved off the property
6 or thrown away or disposed of any documents
7 or photographs that are relevant to the
8 litigation?

9 A. No. No. I don't feel like that's
10 their place, so I wouldn't do it.

11 Q. Since the beginning of the
12 litigation, have you moved any other works
13 off the property other than the ones we've
14 just talked about?

15 A. Not that I can think of.

16 Q. What about works that you sold to
17 Rosenbaum or other sales outlets, for
18 example?

19 A. Well, I've sold things if that's
20 what you are asking. But nothing has been
21 sold to Rosenbaum since the beginning of the
22 litigation because he was, behind my back,
23 corroborating with the estate to screw me so
24 I would never trust him again. He is a
25 swindler.

1
2 it's either two or three years.

3 Q. What did he -- what did he do for
4 you when he worked for you?

5 A. Well, he -- I knew him previously,
6 and he was an attorney, and he came on to
7 consult the legal matters at hand. I was
8 looking for another attorney, and I thought I
9 would possibly hire him, and he told me that
10 he retired. We found out that wasn't exactly
11 true later.

12 Q. You are aware that he has been
13 disbarred as an attorney, correct?

14 A. Yes. I was unaware of the terms of
15 his disbarment until relatively recently, and
16 I was fairly shocked of those terms. And I
17 frankly conferred with the people at the bar
18 association to make sure that what I thought
19 I was reading was true, and they confirmed
20 everything, which is very upsetting to me.

21 Q. Can you describe for me the types
22 of things that Oz Gonzalez did for you when
23 he worked for you?

24 A. Well, mainly he was on the phone
25 with the various attorneys that I worked

1
2 We've also found out that he sold,
3 as we told the estate, he sold things for
4 double and triple what he claimed he sold
5 them for, kept two sets of books, and
6 probably owes us, I don't know, \$12 million
7 of which the estate is entitled to a third.
8 I don't know why they didn't -- they instead
9 wanted to work with Rosenbaum rather than
10 collect \$4 million from him, which I don't
11 really get either.

12 Q. Other than the storage facility in
13 Middletown, New York, where a lot of these
14 artworks now reside, do you have any other
15 storage facilities where you keep artworks or
16 documents?

17 A. No.

18 Q. Do you have any other locations
19 than your Katonah studio or this storage
20 facility where you keep Indiana artwork or
21 documents related to Robert Indiana?

22 A. No.

23 Q. How long has Oz Gonzalez worked for
24 you?

25 A. We had that debate. I'm not sure;

1
2 with, specifically Mr. Markham, Zerner. And
3 he also, previous to that, worked often and
4 daily with Mr. Simone. And he also went up
5 to Maine and negotiated a mediation
6 settlement as essentially the principal
7 attorney, which, you know, we now understand
8 it's illegal so it's little -- we felt like
9 we were lied to from day one with Mr.
10 Gonzalez.

11 Q. Well, Mr. Gonzalez is not your
12 attorney in this litigation, is that correct?

13 A. No. But his -- his disbarment,
14 which happened -- he was disbarred twice as
15 it turns out. And the terms of disbarment
16 prevented him from speaking to anyone on any
17 matter regarding anything legal, and that's
18 clearly not what he complied with in the
19 course of the last two or three years here.
20 He was speaking with our attorneys in very
21 complicated legal matters on a daily basis
22 and then conferring with me on a daily basis
23 about legal things, and that is what he was
24 paid to do, which is not what he was allowed
25 to do.

1
2 Q. Did you have an engagement letter
3 or retention letter or employment contract
4 with Mr. Gonzalez?

5 A. No. It was a handshake deal.

6 Q. Do you have an engagement letter or
7 retention letter with Ms. Zerner's firm?

8 A. Yes.

9 Q. Did you have an engagement letter
10 or retention letter with Mr. Simone's firm?

11 A. Yes.

12 Q. What about with Mr. Dowd's firm?

13 A. Yes. But none of them have a
14 decree from the bar association saying not to
15 confer to anyone about anything of a legal
16 matter. None -- none of the three people you
17 mentioned are prevented from conferring with
18 someone about any legal matters, which I'm
19 told, by the way, is illegal and has jail
20 time associated with it.

21 Q. Did ask you Mr. Gonzalez to help
22 you collect documents as part of this case?
23 Was he one of the people that helped collect
24 documents and information to produce in this
25 case?

1
2 A. He doesn't know anything about art
3 or how to sell it. He claimed that he did;
4 that was part of what he sold himself as
5 doing but it was abundantly clear, we gave
6 him a few books and projects; he claimed he
7 knew a whole bunch of people, in specifically
8 in Bronxville and those areas, that he could
9 sell art to. And we did that for a few weeks
10 and it became very clear that all we were
11 going to do is spend a huge amount of our
12 time giving him materials but nothing would
13 transpire from it. He wouldn't sell any --
14 didn't sell any art in the three years he was
15 here.

16 Does that answer your question or
17 no? Hello? Did it freeze?

18 Q. No. I didn't freeze. I'm -- I'm
19 reading your answer to see if it answered my
20 question. I think it did. Thank you.

21 Does he live on your property?

22 A. Yes.

23 Q. Does he still work for you?

24 A. No.

25 Q. Who is Greg Allen?

1
2 A. I'm not sure. He reviewed a lot of
3 the documents and then made a lot of comments
4 about what the documents meant and also made
5 comments of what he felt I should do in
6 relationship to just about every document
7 that came in. So I don't know if that's what
8 you are asking or not; I can't tell.

9 Q. More specifically I'm asking, you
10 know, as part of the process where you or
11 your assistants or Mr. Dowd's firm went
12 through your computers and went through your
13 studio for hardcopy documents looking for
14 documents to produce in this litigation, did
15 Mr. Gonzalez also do those types of
16 activities? Go through your computer or
17 emails or hardcopy documents in your studio
18 or home to look for documents to give over to
19 Morgan Foundation in this litigation?

20 A. Yes.

21 Q. He did?

22 A. Yeah.

23 Q. Okay. Did he help you in the
24 fabrication or creation or sale or
25 distribution of any Indiana art works?

1
2 A. He is an art consultant that
3 formerly directed a few different studios and
4 was a -- one of the people who ran Peter
5 Max's studio. He has a number of fairly high
6 profile collectors that he works with. I
7 know him for probably 12 years.

8 Q. Do you work with him to sell
9 Indiana art works?

10 A. Yes.

11 Q. Can you describe to me how you work
12 with him to sell Indiana art works?

13 A. He calls me up and says, I have
14 somebody who wants to buy a Robert Indiana
15 artwork, do you have it?

16 Q. And how long -- how long has that
17 arrangement been going on for?

18 A. Since I started with Robert
19 Indiana, he was one of the first -- I believe
20 he bought some Books of Love going all the
21 back to 1995, '96. But more recently, when
22 we started the HOPE stuff, he was one of the
23 people who sold a number of the Barack Obama
24 HOPEs, so he was in on it from the beginning.

25 Q. Where does he live?

1
2 A. Various places actually. He has a
3 place up here near me in the country. He has
4 a studio house and office in West New York.
5 And I believe he has an apartment on
6 Riverside Drive. And I can't tell; either he
7 stays with clients or -- I know he had a
8 place in Malibu for several years. And I
9 think he has a place in Las Vegas because --
10 or he has a lot of clients there. I don't
11 really probe into what he owns and doesn't
12 own, but he is in Las Vegas a lot with
13 clients. I think he's got a place there as
14 well.

15 Q. Do you have his contact information
16 available if I could ask you to give it to
17 your attorneys to give to me after the
18 deposition?

19 A. Absolutely. He would love to talk
20 to you.

21 Q. Great.

22 Did you ever speak to Greg Allen
23 about transferring art works to him that he
24 would then transfer to trusts that were set
25 up to benefit your children?

1 already made a mental commitment to selling
2 it, I'm going to sell it to somebody else.

3 So he -- he is somebody that's been
4 buying -- I mean, I know he's -- he's gotten
5 in front of clients that have bought Rothkos.
6 Those are big ticket items. And he has also
7 gotten in front of clients that bought major
8 Warhols, and those are big ticket items.

9 So I know he's got different
10 clients that -- that are very high -- you
11 know, high profile or if not high profile,
12 high-worth people and they were -- he was
13 quite anxious to buy everything.

14 Q. Did that conversation happen this
15 year?

16 A. Yes.

17 Q. Did it happen after Mr. Nikas'
18 first visit up to your studio?

19 A. I think it probably happened
20 before. I mean, you know, there were points
21 at which I said to him that, you know, I'm
22 kind of sick of dealing with all this crap.

23 And he said, you know what, if you
24 want to sell everything, you know, we will
25

1
2 A. I spoke to Gregory Allen about
3 buying all the work. He had two or three
4 different clients that were interested, you
5 know, after Mr. Nikas or whomever purported
6 to buy all the works, which I'm not sure
7 ended up as really an honest -- since they
8 never made a list.

9 He actually came forward and said
10 he'd like to -- he had clients that would bid
11 against that. That depending on what I was
12 offered he might have clients -- three
13 different clients that would be interested in
14 purchasing all the work and/or purchasing
15 half the work or purchasing with the estate
16 or any way that it could be set up.

17 Q. When did you have that conversation
18 with him?

19 A. Right after the first time it was
20 offered to me to sell all the work. I
21 thought, well, if I'm going to sell all the
22 work, like if I'm going to sell a car, you
23 know, if the first person wants to buy the
24 car and I decide I'm going to sell it and
25 that person doesn't come through and I've

1 give the estate its whatever, very
2 transparent. The estate wants to -- if they
3 are entitled to get 30 percent, or whatever
4 the number is, you know, we'll -- we'll make
5 the check out in two parts; one part for the
6 estate, one part for you if you want to sell.
7 And you know, I kept that in the back of my
8 mind. I still do, by the way.

9 Q. And the works that he was offering
10 to purchase, those are Indiana works,
11 correct?

12 A. He is interested in actually buying
13 everything. He is interested in the Katz,
14 the Cottingham, and Indiana. That's -- which
15 is, you know, I don't know if he is
16 interested in the Stella, the Lichtenstein or
17 the Rivers or the other things I have. But
18 those three, and possibly Sultan, but
19 certainly those three. He was interested in
20 buying all the Indiana, all the -- all the
21 Katz and all the Cottingham. And possibly
22 all the Picassos as well.

23 Q. Did you speak to Mr. Allen about
24 transferring those works to trusts that were
25

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1 set up in your son's name?

2 A. I don't have a trust set up in my
3 son's name.

4 Q. Did you ever speak to Mr. Allen
5 about setting up trusts in your son's name?

6 A. Mr. Allen doesn't set up trusts;
7 it's not what he does. He is an art dealer.

8 Q. Okay. But that's not my question.
9 My question is did you ever speak
10 to him about transferring these works to
11 trusts that were set up in your son's name?

12 A. No. It's not what he does; he is
13 an art dealer.

14 MS. ZERNER: If I could -- I'm
15 sorry to interrupt, Maaren. I'm just
16 being sure. Construction just seems to
17 have started outside my window, and I
18 didn't know if you could hear it. If I
19 need to move.

20 MS. SHAH: I can't hear it. It's
21 not bothering the audio quality on my
22 end.

23 MS. ZERNER: Okay.

24 THE WITNESS: Yeah. I don't hear
25

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1 Q. Did you ever apprise the estate
2 that you were thinking of selling the Indiana
3 works to Mr. Allen?

4 A. It's none of their business. It's
5 my work. And under all the terms of the
6 contract, I'm the one who gets to sell it.

7 So going through that kind of
8 nonsense, after -- frankly, the whole estate
9 is in terrible trouble with the State of
10 Maine. They are accused of so many things.
11 You know, to go put a lot of trust in James
12 Brannan right now, I don't know if that's a
13 clever idea because he's got a 50/50 chance
14 of being in bankruptcy and a 25 percent
15 chance of being in jail.

16 Q. So is that a no, that you never
17 apprised the estate that you were thinking of
18 selling the works to Greg Allen?

19 A. Oh, no. The answer was it's none
20 of their business. That's the answer.

21 Q. My question, though, is did you
22 ever tell them you were thinking about
23 selling the works to Greg Allen, yes or no?

24 A. And the answer remains. It's none
25

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1 it either.

2 MS. ZERNER: Sorry. Okay. Great.

3 MS. SHAH: Thank you.

4 Q. How many conversations did you have
5 with Greg Allen about potentially purchasing
6 all these Indiana works?

7 A. I don't know. We talk about it
8 often. He is still very interested. And
9 he's got three different clients, so he says
10 that each one of which is a high-net-worth
11 individual, one of whom apparently recently
12 inherited quite a large amount of money and
13 is looking for investments.

14 So, and I know other people as well
15 that have purchased from me in the past or
16 that I know from other businesses, I -- you
17 know, I consult with several high profile,
18 very high-net-worth developers who also would
19 have -- and also, I have another friend
20 that's a -- he's a Wall Street guy who sets
21 up deals. So I have people that would be
22 interested in purchasing entire lock, stock
23 and barrel; not just Gregory Allen, but
24 others as well.
25

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1 of their business. I frankly don't want to
2 have anything to do with them until they can
3 straighten out whether or not they are
4 crooks. I don't really want to deal with
5 crooks. I --

6 Q. So you did not tell them?

7 A. The answer is I don't deal with
8 crooks. They're crooks right now. Until
9 they can be proven otherwise right now
10 they're thieves.

11 Q. Is there a reason you don't want to
12 answer the question I'm asking?

13 A. No. The answer is the -- what I've
14 given you. Is that it's none of their
15 business and none of yours either.

16 Q. And so you did not -- you have not
17 told them that you were thinking about
18 selling the works to Greg Allen.

19 Am I correct in that assumption?

20 A. Well, they -- they should be able
21 to figure out that once they make an offer to
22 buy everything, that they've opened up
23 Pandora's Box to sell everything. Because
24 nothing in the contract that prevents me from
25

1 selling it in one piece.

2 So once they've offered to buy it
3 in one piece, which they -- how long ago now?
4 I've had conversations with Mr. Zaretsky,
5 what is it, six, seven months ago? So I
6 don't know.

7 You know, they've opened up the
8 idea that maybe you should just sell
9 everything and, you know, now I agree with
10 them. Maybe I should just sell everything.

11 Q. Okay. I'm going to assume from
12 that answer that you have not apprised them
13 that you were thinking of selling the works
14 to Greg Allen, and you correct me if that is
15 wrong, okay?

16 A. It's none of their business, like I
17 said. I'm not going to -- I don't have to
18 apprise anybody of anything.

19 (Simultaneous crosstalk.)

20 A. -- they don't have any rights -- if
21 they asked me I would tell them probably
22 because I don't care. But in terms of my
23 rights, I have every right to sell
24 everything. And frankly, if I didn't, then
25

1 answer that you have not apprised Mr. Nikas
2 or Morgan Art Foundation that you were
3 thinking of selling the works to Greg
4 Allen --

5 (Simultaneous crosstalk.)

6 -- and you can please correct me
7 now if that assumption is wrong.

8 A. No. That's 100 percent right.

9 Q. Okay.

10 A. And the more you talk, the more I
11 think I will sell it -- I think I'll just
12 sell it tonight. I'm kind of sick of the
13 lies.

14 Q. Who would you sell it to tonight?

15 A. All the people I just mentioned
16 before.

17 Q. You only mentioned Greg Allen. Who
18 else are you thinking about selling it to?

19 A. I -- I told you that there are
20 several other people that I work with that
21 are developers, and Greg Allen himself has
22 got three different people that want to buy
23 it.

24 Q. Can you give me the names of anyone
25

1 you couldn't come to approach me to buy
2 everything. So what else -- what is there?

3 Q. And you did not apprise Morgan Art
4 Foundation or Mr. Nikas that you were
5 thinking of selling the Indiana works to Greg
6 Allen, is that right?

7 A. Nikas opened up the floor to sell
8 everything, and he hasn't come through. And
9 it doesn't appear, from what we can tell,
10 that it's been an honest offer at all.

11 We feel that it's been a dishonest
12 offer that has not been followed up in a way
13 that has anything resembling honesty. And
14 that I honestly want to sell everything
15 because it will free up my house and my
16 space. So that's your answer right there.

17 Q. All right. I'm going to assume
18 from that answer that you have not apprised
19 Mr. Nikas or Morgan Art Foundation that you
20 were thinking of selling those works to Greg
21 Allen --

22 (Simultaneous crosstalk.)

23 Q. So, just for the record, my
24 question was I'm going to assume from that
25

1 else you are thinking of selling the work to?

2 A. Nope.

3 Q. Do you know the names?

4 A. I might.

5 Q. Is that a yes or a no?

6 A. None of your business.

7 Q. That's not the question.

8 A. Well, that's the answer. You are
9 asking me personal information about my
10 business that you have no right to ask.

11 That's the answer. I'm not going
12 to start opening up people to you given that
13 everything you've done thus far has been, at
14 best, suspect and, at worse, illegal.

15 MS. ZERNER: Mr. McKenzie, when --
16 since a question isn't pending, I would
17 like to take a break and speak with
18 Mr. McKenzie.

19 MS. SHAH: That's fine.

20 THE VIDEOGRAPHER: Off the record
21 at 1:46 p.m.

22 (Recess.)

23 THE VIDEOGRAPHER: On the record at
24 2:01 p.m.
25

1
2 Q. Hi, Mr. McKenzie. Can you hear me?
3 A. Yes, perfectly.
4 Q. Great. Thank you.
5 Coming back to Greg Allen, how do
6 you typically communicate with Mr. Allen? Is
7 that over email? Over the phone? A
8 combination of the two?
9 A. And in person as well.
10 Q. Okay. So email, phone and in
11 person, is that right?
12 A. Mainly phone and in person.
13 MS. ZERNER: Mr. McKenzie, you do
14 sound a little far away to me. I
15 think -- I don't know where your phone
16 is, if it's different from where it was
17 before.
18 Q. Have you ever emailed with Greg
19 Allen about Indiana works?
20 A. Probably.
21 Q. Do you keep or have any invoices of
22 Greg Allen sales of Indiana works that were
23 produced by you?
24 A. Possibly. I would have to look. I
25 mean, it's -- again, it's mainly, I know him

1
2 him having a real interest in that either, to
3 tell you the truth.
4 Q. Do you keep any records of your
5 sales to or through him?
6 A. Yes.
7 Q. Do you know whether or not you've
8 provided those records to us in this case?
9 A. No. I'm still owed 3 and a half
10 million dollars from back royalties, so got a
11 long way to go.
12 Q. Was that a no, you don't know; or
13 no, you have not provided them?
14 A. I'm not -- what was the question
15 again?
16 Q. The -- let me ask it a better way.
17 Have you provided those records to us as
18 part of this case?
19 A. No.
20 Q. Are there any other records of your
21 sales of Indiana works that you have not
22 provided to us as part of this case?
23 A. I don't think so; not that I can
24 think of.
25 Q. Have you ever been advised by

1
2 for quite many years. A lot of it is
3 handshake deals.
4 Q. How many Indiana works do you think
5 he has sold for you?
6 A. Since the very beginning?
7 Q. Yeah.
8 A. I think from the very beginning he
9 bought six or seven HOPE paintings, maybe one
10 or two sculptures, and possibly 10 or 12 HOPE
11 prints. And he also bought three or four
12 Cottingham paintings, I believe a Sultan
13 painting, and I'm not really sure what else.
14 Q. Did he buy any of the Bob Dylan
15 works?
16 A. Not to my knowledge. He was very
17 interested in it, but I don't think any --
18 anything transpired.
19 Q. Did he buy any LOVE works?
20 A. I believe he bought a Book of Love
21 several years ago.
22
23 Q. What about any ART, A-R-T, or EAT,
24 E-A-T works?
25 A. I don't think so. I don't recall

1
2 anyone that selling or transferring works to
3 Greg Allen would constitute a fraudulent
4 transfer?
5 A. No.
6 Q. Have you ever discussed with anyone
7 the idea of a fraudulent transfer when it
8 comes to Indiana works or this case?
9 MS. ZERNER: Object -- I'd just
10 like to make -- wait one second,
11 Mr. McKenzie.
12 I just want to object to the extent
13 he has consulted with attorneys and this
14 calls for attorney/client privileged
15 communications.
16 Q. Okay. Let's -- let's start with a
17 yes or a no answer to that question, and then
18 we can take it from there to make sure you
19 don't reveal privileged information.
20 A. I don't even know what you are
21 talking about to tell you the truth.
22 How could -- how would be selling a work to
23 anyone be fraudulent? Tell me.
24 Q. Well, I can think of a number of
25 ways. But my question is --

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1
2 A. I can think of none so --
3 Q. Okay.
4 A. -- to me, it's a nonsensical
5 question, and the answer is no.
6 Q. All right. So the answer is no to
7 the question have you ever had a discussions
8 with anyone about fraudulent transfer when it
9 comes to Indiana works?
10 A. No.
11 Q. Have you ever made a plan with
12 anyone to conceal assets in order to protect
13 it from judgment in this case?
14 A. I'm not sure what you are asking.
15 What now?
16 Q. Have you ever had any discussions
17 with anyone about concealing assets in order
18 to protect them from judgment resulting from
19 this case?
20 A. No. I had discussions with an
21 attorney about setting up estate for my
22 children --
23 MS. ZERNER: Mr. McKenzie, I just
24 want to make sure unless you choose to,
25 that you -- you know, if you want to

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1
2 A. Yeah.
3 Q. Have you produced the records of
4 those sales in this litigation?
5 A. Not yet.
6 Q. Have you produced the records of
7 the fabrications that you have done during
8 the pendency of this litigation?
9 A. I wouldn't -- who would I produce
10 them for?
11 Q. Have you given them to your
12 attorneys to give to us?
13 A. No. I don't know who "us" is
14 because I don't really know who is who in the
15 game anymore. You've got yourself purporting
16 to be the Star of Hope. You've got the Star
17 of Hope, I don't know who they are anymore.
18 You've got the estate that's basically under
19 investigation in Maine.
20 So I really don't know who's who on
21 your side or what rights they have under any
22 circumstances. I -- I don't know anymore.
23 There's a lot of -- everyone is against
24 everyone. Morgan is against the estate. The
25 estate is against Morgan. So I don't know

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1
2 protect your attorney/client
3 communications to not to divulge the
4 subject matters that you discuss with
5 your attorneys.
6 THE WITNESS: Okay.
7 Q. I'm not going to ask anymore about
8 that.
9 Are you continuing to print or
10 fabricate Indiana works?
11 A. Yes.
12 Q. Have you been continuing to print
13 or fabricate Indiana works throughout this
14 litigation?
15 A. 100 percent.
16 Q. What works? What are the images?
17 A. HOPE.
18 Q. Paintings?
19 A. Yeah.
20 Q. Prints?
21 A. No.
22 Q. Sculptures?
23 A. Yes.
24 Q. Have you been selling Indiana works
25 during the pendency of this litigation?

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1
2 who's -- who's who. I really don't and
3 neither does anybody else.
4 Q. Okay. But am I correct that you
5 have not turned over to your attorneys to
6 produce in this litigation records of the
7 Indiana works that you've been producing
8 during this litigation?
9 A. Absolutely not.
10 Q. Absolutely not, you have not turned
11 them over?
12 A. Absolutely not. That means
13 completely not and no and never. Maybe when
14 something comes that makes sense, I can show
15 it, but right now, it doesn't make sense.
16 Q. For the Indiana works that you have
17 been producing during the pendency of this
18 litigation, have you been stamping them on
19 the back with the Indiana stencil?
20 A. Exactly as the Supreme Court asked
21 me to do.
22 Q. What Supreme Court?
23 A. New York Supreme Court.
24 Q. What are you referring to when you
25 say, "the Supreme Court asked me to do"?

1
2 A. We sat down with the estate and the
3 Judge Schechter. And Judge Schechter said she
4 didn't like to break up a winning team, that
5 I had made over \$10 million for Indiana, and
6 I should continue to make and fabricate art.

7 So I'm doing what the judge asked
8 me to do.

9 Q. When did this conversation occur?

10 A. I can tell you exactly if I can
11 spend a minute looking for it. It wasn't a
12 conversation. It was -- it was a court
13 appearance that got ruled on by the judge.

14 For some reason I'm not finding it,
15 but we can send it to you. It's a -- it's a
16 Supreme Court ruling signed by
17 Judge Schechter --

18 Q. Okay.

19 A. -- which I'm sure you have in your
20 files somewhere.

21 Q. And when you stamp the back of the
22 works that you've been -- the Indiana works
23 you've been fabricating with the Indiana
24 stencil, is the date that is stamped on the
25 back a date that precedes 2018 or that

1 interested in finishing it. It's too much
2 work and doesn't return enough money.

3 I don't know if that answers your
4 question or not. And I found the Supreme
5 Court order. I have it in my hand.

6 It's from Honorable Jennifer G.
7 Schechter, S-C-H-E-C-T-E-R, and she is
8 determining that we should continue to
9 fabricate art pending whatever happens in the
10 arbitration. So that's, we are following the
11 letter of the law from the Honorable Jennifer
12 G. Schechter, Supreme Court of the State of
13 New York, New York County.

14 Q. Okay. Thank you.

15 A. And it's signed 9/22/2019.

16 Q. Thank you.

17 A. But we don't -- until another judge
18 reverses that, we are going to obey what the
19 judge asked us to do.

20 Q. I assume you have that paper
21 sitting in front of you, is that right?

22 A. I do. Yeah, I sure do.

23 Q. Do you have any other papers
24 sitting in front of you?
25

1 post-dates 2018?

2 A. It would be the date of when we
3 began that particular edition. So if an
4 edition was of seven and we only printed one,
5 which happened a lot, so we have the right to
6 do six more or five more, whatever the number
7 is.
8

9 And if that was started in 2012,
10 then we have to use the stencil from 2012.
11 If it was started in 2015, we have to do it
12 in 2015. If it was done in 2017, we have to
13 do it in 2017. Because that's the rules and
14 regulations that are set up by the College
15 Art Association for how you continue the
16 artwork of an artist who deceases.

17 You have to make it exactly as he
18 identified it, in the same time and as when
19 he did it. So the same would be true with
20 the sculptures. The same would be true for
21 paintings.

22 Prints are trickier because --
23 first of all, I don't know -- there was only
24 one print edition that we started that we
25 didn't finish and, frankly, I'm not that

1 A. Yes.

2 Q. Can you tell me what they are?

3 A. I have a lot of papers sitting in
4 front of me. Not that many relate to you. A
5 whole bunch of real estate paperwork here for
6 one thing. But I just happened to find this
7 mixed in with whatever else, things from
8 Barbara Moses.
9

10 Q. Is there -- are there any other
11 papers sitting in front of you that you've
12 referred to during this deposition, looked
13 at?

14 A. No. You just happened to bring
15 this one up, so I had a feeling you would
16 because --

17 Q. Okay.

18 A. -- you have some kind of ridiculous
19 story that I'm forging things, but I'm only
20 following the order of the judge. So you
21 might want to call the judge and tell her she
22 doesn't have any right to do what she says or
23 stop saying that I'm forging things.

24 MS. ZERNER: Mr. McKenzie, if you
25 could wait for a question and then

1
2 answer the question, that would be
3 helpful for all of us in getting through
4 today.

5 THE WITNESS: Okay.

6 MS. ZERNER: Thank you.

7 THE WITNESS: Okay.

8 Q. Can you tell me what orders from
9 Judge Moses you have sitting in front of you?

10 A. Orders scheduling the conference.
11 Namely about these conferences, just the
12 timing of it.

13 Q. Can you give me the dates on each
14 of those orders?

15 A. Oh, Christ. This is 8/31/2021.
16 Another one here. And this is -- this is a
17 letter to Judge Moses from you, whatever that
18 is. I don't see the date; August 30th.

19 And that's what I've got.

20 Q. Okay. Going back to Mr. Nikas'
21 second visit up to your studio.

22 Are you aware that Mr. Nikas and
23 his associates while he -- while they were
24 there took photographs of various documents
25 and art works that are related to this

1 same thing, same magazine article reproduced
2 16 times. I don't know why I need that. To
3 me it seems obnoxious really I think is the
4 word that comes to mind. I didn't want to be
5 obnoxious and give you the same thing 16
6 times.

7 Q. So was it you that made the
8 decision not to produce things that you
9 believed were redundant?

10 A. No. That was -- again, that was
11 Mr. Dowd. He was the one who initiated all
12 this stuff. And I didn't even have anything
13 to do with it other than I opened up all
14 my -- my records to them to do whatever they
15 wanted, all my studio, all my staff and all
16 my computers and phones. I mean I can't do
17 anymore than that.

18 I don't know what they did or
19 didn't do or submit or not submit or what
20 they thought was important or not important.
21 I didn't plug into any of that. They just
22 stayed here for days and hours and took
23 whatever it was they felt was relevant to
24 this case.
25

1 litigation?

2 A. Yes.

3 Q. And are you aware that none of
4 those documents or photographs of the art
5 works had been produced before in this
6 litigation?

7 A. It seemed to me that, you know, if
8 I have a whole book which was given to you
9 and all kinds of other things, that it's very
10 redundant. So once you have a picture of one
11 thing, why do you want to have it five times?

12 So you might have a decision that
13 you want to have the same thing 30 times. We
14 may have the decision that it's redundant.
15 So I didn't really see anything there that
16 you didn't have.

17 You know, clearly, you had the
18 whole book Robert Indiana A to Z in this. I
19 don't know how many hundreds of things in
20 there.

21 And then we supplemented that with
22 I don't know how many thousands and thousands
23 of things more. At a certain point, you
24 know, when I got things from you, you had the
25

1 Q. Okay. I'm going to show you some
2 of the photographs of -- of the documents and
3 materials that we photographed in your studio
4 next.

5 MS. SHAH: And I would like to
6 start with Exhibit 4. Broderick, I'm
7 going to ask you pull up on the screen a
8 series of exhibits one after another.

9 Mr. McKenzie, if you can look at
10 them as we pull them up and mark them,
11 and then I am going to ask you questions
12 about all of them together. Just let me
13 know if it's confusing.

14 Broderick, my apologies. It's
15 tab 1, Exhibit 4.

16 (Exhibit 2, Docket 393-4 Art
17 archive printout of Book of Love covers,
18 marked for identification.)

19 Q. All right. This is a document that
20 was attached as Docket 393-4 on the docket in
21 this case. It's dated at the bottom 3/23/17.
22 We are going to mark it as Exhibit 2.

23 And I will show you a few more of
24 these, Mr. McKenzie.
25

1 But just to start, can you see the
2 document in front of us?

3 A. Yes.

4 Q. Can you tell me what this is?

5 A. This is one of the things that is
6 from the -- what we call the art archive,
7 which, unfortunately, is defective. So we
8 are not always sure how accurate it is.

9 These are Book of Love things.
10 These were the -- the covers of the Book of
11 Love. I think that's what it is; namely, the
12 covers to the Book of Love, which was a
13 1993/1994 project.

14 Q. What is the art archive that you
15 just referenced?

16 A. Somebody -- I think it may have
17 been Katie, the person that we referenced
18 before, had knowledge of an art archive,
19 which is a very complicated program that I
20 think she knew how to run -- I'm not sure
21 that we know how to run -- which you can add
22 things into and subtract. I don't know if we
23 know how to subtract. I don't know if we
24 have added properly.
25

1 that what's in there, in the art archive, is
2 really accurate to what we have.

3 Q. Okay. Apart from whether it's
4 accurate or not, was the intent to catalogue
5 the Indiana works that you produced over
6 time?
7

8 A. Yeah. That was -- the idea was to
9 actually know not only what we had but where
10 it was in the studio. Was it upstairs,
11 downstairs, back. I don't know that we got
12 that far. I don't know. Like, I don't
13 really plug into this much. I only get the
14 report from others of what's happened and
15 not.

16 Q. And does this art archive that we
17 are looking at also list, for example, you
18 know, if the work was sent to an exhibition
19 or if the work was sold to a particular
20 person or sent to Rosenbaum for example?

21 A. Well, it seems to say that here; so
22 I guess yes, it does. And the intent was to
23 be able to track everything. You know, we
24 didn't quite get it together. Because, like,
25 the people that have been doing it for the

1 So we have this whole record in
2 this art archive, which none of us is really
3 quite sure is accurate, unfortunately. And
4 that's why we were hoping that if you came
5 here for all those hours and went through
6 every last piece and documented it, that we
7 would be able to compare that to our art
8 archive and correct it. But, unfortunately,
9 it doesn't -- doesn't seem like anyone did
10 an -- any attempt to really see what was
11 here.
12

13 Q. Does the art archive list all of
14 the Indiana works that you have produced over
15 the years?

16 A. Like I said, we are not sure of its
17 accuracy because the person who started it,
18 I'm not sure who it is, but whoever it was no
19 longer works here. And various people went
20 through it over the course of the last many
21 years and none of us, at least now, really
22 are certain that we know how to navigate the
23 art archive. And we are not sure if people
24 along the way knew how to navigate the art
25 archive either. So we can't really tell you

1 last several years, I don't think anyone has
2 a firm grip on the art archive. I know I
3 don't.
4

5 Q. Who has been managing it for the
6 last several years?

7 A. It's gone from person to person to
8 person as people came in and out of here.

9 Q. Can you give me any of their names?

10 A. Well, I know Katie was on top of
11 it. I'm not sure if she is the one who
12 initiated it. I'm not sure. Annette seems
13 to be the one who knows the most about it
14 now. And in between, there was a woman who
15 worked here and I can't even remember her
16 name. That was really way back, probably
17 2011 or '12. Blond hair. She was here for
18 about six months specifically to do this, but
19 I'm not in touch with her. I don't know what
20 she does or where she is. I don't know if
21 there is anybody else, but we kind of lost a
22 handle on it when Katie left.

23 Q. When did Katie leave?

24 A. I'm trying to remember. I'm going
25 to say 2015, 2014.

1
2 Q. Do you know if Annette has
3 continued to update the art archive with the
4 HOPE works you've been fabricating recently
5 for example?

6 A. I'm not sure. You know, I don't
7 really -- I don't know if she knows art
8 archive as well as she needs to. I know when
9 we ask her to get something from art archive,
10 it doesn't always work out.

11 You know, we are just not -- it's a
12 good program, but whoever started it knew how
13 it worked. I don't think we've had another
14 person who really had the full idea of what
15 this program does. It's apparently very,
16 very complicated.

17 Q. But Annette has the art archive
18 records available to her to check, is that
19 right?

20 A. I think so.

21 Q. And you have the art archive
22 records available to you to check, right?

23 A. I wouldn't know where to begin to
24 check the art archive. I wouldn't know how
25 to open it, where it is, how to get there or

1 me.

2 Q. And do you have some of the
3 printouts around your studio?

4 A. Like I said, I don't know. Maybe.
5 I guess so. This -- this looks like a
6 printout and it comes from the studio, so the
7 answer must be that somewhere someone has
8 printed it out over the years somewhere.

9 Q. In No. 7, the entries under No. 7
10 LOVE red metal, the second row there is a
11 notation that says, "G. Allen bought:
12 3/23/14," and then it says, "consigned to
13 Gregory Allen 8/23/13."

14 Do you see that?

15 A. Yes.

16 Q. Is that the same Greg Allen we've
17 been discussing?

18 A. Certainly.

19 Q. Okay. And everywhere it says Greg
20 Allen or G. Allen on this page, is that the
21 same Greg Allen we've been discussing?

22 A. Yes. And Rosenbaum is the same
23 Rosenbaum we've been discussing. And these
24 go back to 2013, 2014. I know he bought --

1 anything else.

2 Q. Is it an electronic program?

3 A. I'm not sure. I think we rent it
4 by the month. I'm not even sure. I don't
5 know if it's a -- if it's old disks or if
6 it's a rental by the month. I don't really
7 know how it works. I know every time --

8 Q. But it -- sorry. Go ahead.

9 A. Every time I try to plug into it, I
10 realize it's way beyond my ability to do
11 anything with it.

12 Q. It's on the computer, is that
13 right? Do I understand that correctly?

14 A. I think so. I don't know if it's
15 in the cloud or on the computer. I really
16 don't know much about it.

17 Q. But it's electronic, it's not
18 hardcopy written documents, correct?

19 A. Yes. But I think we print it out
20 from time to time too; otherwise, how did you
21 get this?

22 Q. Yeah. Are we looking at a
23 printout?

24 A. Yeah. It looks like a printout to
25

1 the original LOVE pieces that -- HOPE pieces
2 that we did for Obama, he was one of the one
3 or two most important purchases of those
4 pieces right from the beginning.

5 Q. Which "he"?

6 A. Gregory Allen.

7 Q. Oh, Greg Allen. Okay.

8 A. Well, Rosenbaum came actually after
9 Gregory Allen. Gregory Allen was there right
10 from day one. He had come to the studio and
11 he was excited.

12 A lot of people didn't think that
13 Obama had any chance of being president. So
14 when we kind of worked with him to make
15 things happen, there was a group of people
16 who didn't want to work with us because they
17 thought this guy isn't going to -- it's a
18 waste of time. And then there were other
19 people who felt that he was an important
20 player and they wanted to be involved. He
21 was -- he was a big supporter of Obama.
22 Rosenbaum less so.

23 Q. Okay.

24 MS. SHAH: If you could take that
25

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1
2 down, Broderick, and pull up tab 001,
3 Exhibit 5. It's probably going to be
4 marked as 339-5 at the end.

5 (Exhibit 3, Docket 393-5 Art
6 archive printout listing Book of Love
7 books, marked for identification.)

8 MS. SHAH: This is a document that
9 is on the docket in this litigation as
10 393-5. It's dated at the bottom
11 3/23/17. We are going to mark it as
12 Exhibit 3, please.

13 Q. Do you see this, Mr. McKenzie?

14 A. I think so. It's more of the LOVE
15 metal pieces, right --

16 Q. Yeah. It appears to be part of the
17 same printout of the art archive listing Book
18 of Love Indiana books --

19 A. Yeah. I see it. I got it.

20 Q. Do you agree with me that that's
21 what this is?

22 A. Yes.

23 Q. The date at the bottom, do you see
24 that, 3/23/17?

25 A. Yes.

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1 idea. I can't answer. It's a long time ago.

2 Q. Okay. If you'll look with me at
3 the top of the page, under the first block of
4 entries, it says, "Note, image to
5 Woodward."

6 Do you see that?

7 A. No. I don't see that. Where is
8 it?

9 Q. Do you see --

10 A. Oh, there -- yeah, yeah, yeah,
11 yeah. Got it.

12 Q. Does Woodward refer to Woodward
13 Gallery?

14 A. Yes. It might refer to Christine
15 Woodward who is a partner in Woodward
16 Gallery.

17 Q. Okay. And did you sell Indiana
18 works through Woodward Gallery?

19 A. Yes. Pretty much, again, from the
20 beginning. I think that they bought Obama
21 prints in 2008, and they continued to -- to
22 buy a little bit of Indiana. But they bought
23 Alex Katz. I think they bought some
24 Cottingham. Different artists that I work
25

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1
2 Q. Does that indicate to you that this
3 was a printout from 3/23/17 of the art
4 archives?

5 A. I can't tell you. I don't know
6 enough about art archive to say yes or no to
7 that, but it's as good a guess as I would
8 give. I don't know that it dates everything.
9 I can't tell you. I don't use art archive so
10 I don't know how it works.

11 Q. Okay. And are you aware that -- so
12 this is another document that we photographed
13 during the inspection of your studio. Are
14 you aware of that?

15 A. No. I wasn't here for that. But
16 I'm seeing it now; I believe you. What do
17 you want me to say?

18 Q. And this is a document if it were
19 in your studio that you had available to you,
20 is that right?

21 A. I don't know. I don't know if this
22 document was printed out last week, 2013 or
23 2017. I don't know if Mr. Dowd took pictures
24 of it or copied it or if it was -- I have no
25

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1 with.

2 Q. Okay. And if you look at I guess
3 what I will call entry 13, it says "13 LOVE
4 (red metal)."

5 A. Yes.

6 Q. And then there is a chart
7 underneath it?

8 A. Yes.

9 Q. The second line in the chart there
10 is a note on the right that says, "Bates
11 Museum 2016 exhibit. Used for Utica,
12 Allentown. Returned."

13 A. Okay.

14 Q. Can you tell me what that refers
15 to?

16 A. Both of those were museum exhibits
17 that we put together for Indiana.

18 Q. Okay. So --

19 (Simultaneous crosstalk.)

20 A. -- Allentown. There was some
21 reason why he wanted to show in Allentown. I
22 can't remember what it was.

23 It was -- he wanted to show in
24 Utica because he was in the Air Force in
25

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Utica. He was a quirky guy. He would say yes to things that were, I don't know, questionable in my opinion and no to things that were amazing for reasons that made little to no sense.

You couldn't really predict what he would say yes to. He would -- he said no to having an exhibit at the Metropolitan Museum because he averred that no one goes there.

What am I going to tell him? What do you tell someone that says no one goes to the Metropolitan Museum?

We sent him pictures of thousands of people sitting on the steps in the middle of June, and he still said nobody goes there.

At the same time he said let's have a show in Utica because he was in the Air Force there. So what do you do?

MS. SHAH: Broderick, you can take that down and pull up tab 1, Exhibit 6, 393-6.

(Exhibit 4, Docket 393-6 art archive printout for HOPE works, marked for identification.)

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you know, because the evolution of metal fabrication went into computers, so the ability to make what looks like a portfolio cover or a wall sculpture, all of a sudden became pretty nice looking. And the earlier models that we made frankly looked -- they just didn't look good. You know, neither Bob nor I liked it.

But when I found new fabricators with the computers, both Bob and I were excited to see what that looked like. And we produced -- we finished the LOVE project. And then, once we did the LOVE project, he said we should do some HOPE pieces. I said, You're right. Let's do it.

So they are fabricated metal. And it results from a computer bending the metal so that the metal is so perfectly bent and so perfectly then painted that it almost looks like a metal canvas. All the corners are really tight.

Previous to that we couldn't get corners that were tight. They looked really messy. And we couldn't get -- we had to

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MS. SHAH: This a document that's filed on the court docket as 393-6 dated 3/23/17. We will mark this as Exhibit 4, please.

Q. Mr. McKenzie, can you see this document?

A. Yes.

Q. Is this also a printout from the art archive inventory that you keep?

A. I think so. It looks like the same thing.

Q. This one lists Hope works, is that right?

A. Right.

Q. Can you tell if these are sculptures or paintings or prints?

A. Well, they are printed on pieces of metal. What happened was when I tried printing on metal in 1993, '94, both Bob and I agreed that the fabrication in metal looked horrible. And I went back to it in 2000 or so, and we still agreed that the fabrication of the metal was horrible.

And then, in 2013 or so, I found,

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either get the top and bottom or the two sides, so you had two giant holes in it. And it just didn't -- it wasn't matching what in our mind we thought we were going to be able to make.

So when this new form of fabrication came out, which is all computer generated, we -- we liked it and we made these pieces.

Q. Thank you.

MS. SHAH: If you can pull this down, Broderick, and put up tab 1, 393-12.

(Exhibit 5, Docket 393-12 Art archive printout for Aluminum Art, marked for identification.)

MS. SHAH: This is a document that has been filed on the court docket under No. 393-12, dated also 3/23/17 at the bottom. If we could mark this as Exhibit 5.

Q. Do you see this, Mr. McKenzie?

A. Yes.

Q. Is this another printout from the

1
2 art archive inventory that we've been
3 discussing?

4 A. It appears to be, yes.

5 Q. Up at the top it says, "aluminum
6 art" and then it lists a number of what look
7 like additions to me.

8 Can you explain what this notation
9 means?

10 A. It's the same thing as the other
11 pages, which they're -- they're fabricated
12 metal that happens to be aluminum. They are
13 fabricated and painted aluminum and then
14 screened with the word HOPE.

15 Q. Up at the top corner on the right
16 it says, updated 3/23/17.

17 Do you see that?

18 A. Yes.

19 Q. Do you have any reason to doubt
20 that this was the list that was updated as of
21 3/23/17?

22 A. I'm not sure. It be could be, as
23 soon as you open art -- whatever it is, art
24 archive, it just automatically confirms that
25 you opened it so it says updated. I don't

1
2 Like I said, I turned over my
3 computer. I had the impression they were
4 looking more for things out of the computer
5 and emails, to tell you the truth. And why
6 they didn't go to art archive, I can't tell
7 you. I have no idea.

8 I wasn't the one making those
9 judgment calls. That was really Ray Dowd and
10 his staff. I mean, they were never prevented
11 from accessing anything I owned or had or,
12 you know, boxes or whatever. I took them
13 every -- every single last, you know, inch of
14 everything I opened they had access to.

15 So if they didn't provide some
16 things, how would I know? I wasn't even the
17 one sending it. They were.

18 Q. Did you ever tell Mr. Dowd or any
19 of his associates or any of your other
20 attorneys about the existence of art archive?

21 A. I think so. I mean, I think that
22 they -- you know, they spent quite a lot of
23 time here. Again, I'm not an art archive
24 person. But I'm pretty sure that they would
25 have said, Look, this is how we -- because

1
2 know. Like I said, I don't know how art
3 archive works, and I have a feeling you don't
4 either; so neither one of us can really
5 comment on it.

6 I tried to figure out how it
7 worked. I just -- it's not my thing. It's
8 too complicated for me.

9 So I don't know if as soon as you
10 hit it, it might update. If I send you an
11 email, it's going to update the date. You
12 know, it is what it is. It could well be the
13 same thing. I don't know.

14 Q. All right. And all of these
15 printout pages from art archive we've been
16 looking at in Exhibits 2, 3, 4 and 5, are you
17 aware that these were not produced to us in
18 this litigation?

19 A. I'm not aware. I know there were
20 thousands and thousands and thousands of
21 pages of things produced in the litigation
22 and boxes and boxes of printouts and stuff.
23 I didn't regulate anybody from going into
24 anything I had. I didn't really care if they
25 did or didn't.

1
2 I'm sure they would have asked, Well, how do
3 you determine what you have? And somebody
4 would have given the answer, art archive.

5 I'm pretty sure. Because we were
6 doing art archive since, I don't know when,
7 2000- -- I don't know when we got it, 2015?
8 So by the time Mr. Dowd got in, clearly we
9 had art archive.

10 So why he -- you know, again, I'm
11 not a lawyer. I don't know how discovery
12 works. You know, it's just when somebody
13 says, Can I come over and look at everything
14 in your studio, the answer is yes.

15 Can we keep your computer for a
16 day? Yes.

17 Can we keep your phone? Well,
18 that's a little trickier. If you are going
19 to keep my phone, I'm going to have to come
20 in the city and hang out in your office
21 because I don't want to -- I'm not going to
22 mail you my phone and hope I get it back.
23 It's not going to happen.

24 So when they took my phone, and
25 actually when they took my computer too, I

1
2 let them have it for, I don't know, six hours
3 and I waited in his office until they were
4 done and then took it home.

5 With this stuff, anything that was
6 here, they had full range of anything they
7 wanted to take, photograph, copy. We have
8 Xerox machines. Nobody was prevented from
9 doing whatever they wanted.

10 Q. Do you know one way or another
11 whether or not information from art archive
12 was produced to us in this litigation?

13 A. I have no idea. You know, I
14 didn't -- there were too many things for me
15 to go over. I didn't -- I can't remember if
16 there was 16,000 pieces that were sent over
17 or 26,000, some monstrous number that they
18 subtracted from -- and then however many
19 things came from everybody else. I didn't
20 check anything anybody else.

21 So if my painter sent over 1500
22 things, if my -- if my printer sent over
23 2,000 things, I didn't look at it. I didn't
24 ask him how many it was. I didn't see if it
25 went to Mr. Dowd or went to somebody else or

1
2 that down, please. If you could put up
3 tab 1-15, which would be marked 393-15
4 (Exhibit 6, Docket 393-15 Photograph of
5 proofs of fabricated ART images, marked
6 for identification.)

7 MS. SHAH: This is a document
8 that's been filed on the court docket as
9 393-15. I'm going to mark this as
10 Exhibit 6 I think is where we are at.

11 Q. Do you see this document,
12 Mr. McKenzie?

13 A. Yes.

14 Q. This is another photograph of a
15 document that we took while we were
16 inspecting your studio. Do you have any
17 reason to disagree with that?

18 A. No. I have no idea what it is
19 actually.

20 Q. Well, that was going to be my next
21 question.

22 Can you tell me what it is?

23 A. It looks like nine pieces -- you
24 know, when we were doing two pieces that we
25 did that -- that Bob really changed around

1
2 the estate or you. That's just something I
3 wouldn't really have anything to do with to
4 tell you the truth.

5 Q. If you wanted to access the records
6 in art archive, you could ask Annette to
7 access them for you, is that right?

8 A. I'm not sure. Sometimes she can
9 open it and sometimes she can't. You know, a
10 few times we went to open it, we couldn't do
11 anything.

12 So I don't know -- like I said for,
13 I don't know how many times I have said this.

14 I don't really know much about art
15 archive or how it works. So I don't
16 necessarily -- or really I don't ask anybody,
17 Would you open art archive? That's just not
18 something I would say.

19 Q. Have there been instances that you
20 are aware of where she has been able to
21 access art archive?

22 A. Yes. And I don't know why yes and
23 why no. I have no idea.

24 Q. Okay.

25 MS. SHAH: Broderick, you can pull

1
2 EAT and ART. He had real strong feelings
3 about it. And then we got into different
4 color ways, and he had all these ideas for
5 it.

6 So we tried a lot of different
7 things, some of which he picked out and kept
8 for himself and some of which we -- we kept.

9 So these are variations of -- we
10 did a print of ART. And I can't remember if
11 it was in one of the museums.

12 And while we were trying to get the
13 colors right, he kept on coming up with
14 different ideas for colors. So we -- we
15 tried different stuff. And this looks like
16 some of the trial proofs and tests and color
17 ways that we played around with before we --
18 before actually he decided what the best
19 color was. Some times we did stuff like this
20 and, at the end of it, the whole project
21 died.

22 Q. So these are proofs of Indiana
23 works that you fabricated with the image ART,
24 A-R-T, on it, am I right?

25 A. It's printed, printed on paper.

1 These are paper prints.

2 Q. I see. But they are Indiana works,
3 correct?

4 A. Yes. And they are signed by him,
5 too. Apparently some are fully signed and
6 some are initialed.

7 That's another thing that you never
8 knew what was going to happen when you went
9 into his studio. Sometimes he would sign it;
10 sometimes he would initial it; sometimes we
11 would throw it away. We just never knew
12 where it was going to go until we went there.

13 Q. Can you tell me when these were
14 produced or fabricated?

15 A. I'm looking for a date. Whatever
16 the date on his signature is, that's probably
17 going to tell you when it is. But it's a
18 little too small and messy to read for me
19 right here.

20 Q. There is handwriting on this
21 exhibit. Is that your handwriting?

22 A. It doesn't look like my
23 handwriting.

24 Q. Do you know whose handwriting it
25

1 her to sell?

2 A. I would assume so, yeah. That's
3 what she does; she is an art salesperson.

4 Q. Are you aware that these prints
5 contain images that Morgan alleges that it
6 has the rights to?

7 A. Morgan doesn't have these rights at
8 all. They can allege all they want, but it
9 doesn't -- if it doesn't show up in the U.S.
10 copyright office, it doesn't particularly
11 mean anything.

12 And also, I believe that Indiana
13 would have the rights anyway, as author, to
14 do whatever he wants. So I don't buy into
15 your story very well. And nobody else does
16 either, by the way.

17 Q. Are you aware of whether or not
18 this was produced in the litigation?

19 A. Produced in the litigation. What
20 are you talking about? This was done in
21 2015 -- it was already shipped in 2015. Is
22 that what you are asking?

23 Q. Sorry. No. Let me clarify.

24 Are you aware of whether or not
25

1 is?

2 A. I can't tell you. I have no idea.

3 I'm assuming somebody who worked in the
4 studio was -- had this printout and was
5 trying to determine -- that's what would
6 happen. Sometimes they would go to art
7 archive and say we are missing six pieces.
8 Where the hell are they?

9 And they would call around and find
10 out that Rosenbaum had a couple or somebody
11 else had one. One was sent to a museum and
12 they never returned it. I mean, there's a
13 million variations on that theme.

14 Q. There is a notation above the
15 center image that says, "shipped to Lara
16 Rosenbaum 9/9/15."

17 Do you see that?

18 A. Yes. I would say that that
19 probably means it was shipped to Lara
20 Rosenbaum on 9/9/15. That would be my guess.

21 Q. Is Lara Rosenbaum affiliated with
22 Rosenbaum gallery?

23 A. Yes.

24 Q. And would that have been shipped to
25

1 this document was provided to us in the
2 litigation?

3 A. No. Like I said, I did not go over
4 what Mr. Dowd picked out, sent and shipped,
5 whether -- I assume he did most of it
6 electronically. I don't honestly know.

7 He was the attorney of record. He
8 came in here with staff for many, many hours,
9 and they had the ability to take whatever
10 they were going to take. I don't know what
11 they did take. I don't know what they didn't
12 take. I didn't regulate it.

13 In fact, one of the days they were
14 here, I wasn't even here. I forget. I think
15 I was in California. So I have no clue what
16 they did or didn't do.

17 Q. If I told you that this had not
18 been provided to us in the litigation, this
19 document had not been provided to us in the
20 litigation, would you have any basis to
21 disagree with that?

22 A. Like I said, I have no idea what
23 Mr. Dowd took. I have no clue. He had the
24 ability to take 100 percent of what was here.
25

1
2 I don't know if he took 3 percent,
3 30 percent, 90 percent, 42 percent; I
4 wouldn't have any idea.

5 And how he may have felt that this
6 was -- I don't know if he felt this was an
7 irrelevant document. I don't know what it's
8 relevant to anyway, to tell you the truth.

9 You know, you have that whole book
10 that shows all these pieces that we did.
11 It's not like I'm trying to hide that I did
12 art. I'm proud of it.

13 So not only am I proud of it, I
14 gave it to museums to show. I was on TV with
15 it. It's not like exactly a hidden thing.
16 So I don't get the point.

17 Q. And would that be the same answer
18 if I asked you about, you know, any of the
19 documents that I'll show you photographs of?
20 If I -- you know, if I tell you they haven't
21 been produced in the litigation, do you have
22 any basis to disagree with that?

23 MS. ZERNER: Objection.

24 You can answer if you can,
25 Mr. McKenzie.

1
2 took a picture of it and decided not to send
3 it; if they Xeroxed it and didn't take it. I
4 have no clue.

5 Q. Okay. And that visit -- or those
6 one or two visits by Dowd's associates, is
7 that the only time or are those the only
8 times that lawyers came up to go through
9 whatever materials and documents were in your
10 studio?

11 A. I think so. I don't remember
12 Mr. Simone ever -- he -- he never came here.
13 I don't think so. I can't remember him
14 coming here. I don't think he ever did. And
15 he only had one other associate that we ever
16 met, and I know she definitely didn't come
17 here.

18 So I don't think either of those
19 people came here. And I think by the time
20 Mr. Markham came on board, those issues were
21 kind of assumed to be a moot point. I don't
22 think there was any reason for him to come up
23 here looking for more documents when, in
24 fact, Mr. Dowd had full reign of doing that.
25 You just would assume that he got whatever it

1
2 But you are talking about a
3 whole -- we don't know what documents
4 you are talking about.

5 A. Yeah. So, you are asking about the
6 future. I don't know about that.

7 But I mean I've told you now how it
8 was done. Mr. Dowd sent over two people, a
9 man and a woman; they were junior associates.
10 They were here, I believe, for two days. One
11 of the days I was here, I believe part of the
12 day, and the other day I wasn't here.

13 So I wouldn't know. I didn't
14 regulate. I didn't study. I didn't walk
15 behind them. I wasn't over their shoulder.
16 I wasn't asking what they were doing.

17 They had free access to everything
18 in the studio and the complete cooperation of
19 all the people in the studio to help them get
20 anything they said they needed, whether it
21 was a document or a slide or a picture or a
22 coffee. So I didn't -- I don't know what
23 they took, and I never saw what they sent.

24 So I would have no way of knowing
25 if they sent this or didn't send it; if they

1
2 was he was supposed to get.

3 I mean, he is a fairly competent
4 attorney. I don't have any reason to doubt
5 that he wouldn't abide by whatever discovery
6 rules there are.

7 MS. SHAH: Okay, Broderick. If you
8 could pull that down, please. If you
9 could put up the next one. It's tab 1,
10 Exhibit 17 -- sorry 16, I think. Tab 1,
11 Exhibit 16 is marked 393-16.

12 This is a document that's been
13 filed on the court docket under 393-16.
14 We are going to mark it for the record
15 as Exhibit 7.

16 (Exhibit 7, Docket 393-16
17 Variations on metal of LOVE and HOPE,
18 marked for identification.)

19 Q. Do you see this document,
20 Mr. McKenzie?

21 A. Yeah. I'm guessing that these are
22 some of the variations that were done on
23 metal of LOVE and HOPE that you had before on
24 those pages and pages. LOVE and HOPE on
25 metal. This is just the surface of it

without the rest of it, I think.

Q. Okay. So these are Indiana works of the images LOVE and HOPE that you fabricated, correct?

A. Yes. I think so. I don't see the size of it so it's a guess; but that's what it looks like.

Q. Is this part of the art archive?

A. I don't know. You know, because before it had -- the others all had a little date bottom right. And I was thinking that date popped up as soon as you went into art archive, which I don't know. I'm just guessing.

And this one has no date, so I'm not sure that this is part of art archive or if it was just pictures taken and put into the computer and printed out. Either way, I don't know.

Q. Okay. If I told you that this is a document we found in your studio, would you have any reason to disagree with that?

A. No. You know, again, I have 4,000 works of art. Who knows how many tens of

for. We didn't hide anything. We didn't keep them away from a room. We didn't close a drawer. They had 1,000 percent access to anything we had, including all of our computers and all of our phones.

Q. Okay.

MS. SHAH: Broderick, you can pull that down. Thanks.

And if you could put up tab 1, Exhibit 19. That should be 393-19.

This is a document that's been filed on the court docket under 393-19. We are going to mark it as Exhibit 8 for the record, please.

(Exhibit 8, Docket 393-19 Star of Hope pictures, marked for identification.)

Q. Do you see this picture, Mr. McKenzie?

A. Yes.

Q. What are these?

A. These are Star of Hope pictures. Something Indiana really liked, which we were frankly not that interested in doing but we

thousands of other things here, as well as another maybe 5 or 6,000 works that are not Robert Indiana.

So I don't even know what is here. Sometimes I find things that -- you know, works of art that are very valuable. And I find them and think I didn't even know I had this. So that's what it is.

Q. If I told you that this document hadn't been produced to us as part of this litigation, would you have any reason to disagree with that?

A. You know, you are really going to have to start asking Ray Dowd because he is the one who did all this. I didn't.

You know, you are asking me to speak for what he did when I don't know what he did. And, you know, I don't know if he knows what he did. I don't know.

But I can tell you for sure I did not supervise his discovery. He supervised and his team supervised their own discovery.

All we did was help them find whatever it was they asked they were looking

did it because he was all hopped up on it.

Q. These are Indiana works that you fabricated, is that right?

A. Yes. We printed these. They look like works on paper. Again, I think; it's hard to tell.

Q. Okay. And if I told you we found this in your studio, would you have any basis to disagree with that?

A. No. But if I told you that Ray Dowd gave this to you, I wouldn't have any -- I wouldn't any idea if you got it and you are hiding it. I don't know.

You are asking me if I'm hiding it. I don't know what you are talking about. I'm asking you if you are hiding it, so I don't know.

You know, I don't know if you got all these things and you are just hiding it and reproducing it a second time. I don't know. I really don't know.

I don't know what Mr. Dowd did and I don't know what you did, so I don't know if either one of you is hiding from the other

1 one. I don't have any clue.

2 Q. Okay. I appreciate that. If you
3 could listen just specifically to my
4 question, I think it will help speed things
5 along.

6 And the question was, if I told you
7 that we found this in your studio, would you
8 have any reason to disagree with that?

9 A. Like I say, I don't know what is
10 here. It could be here. Sounds right. It
11 sounds like something we would have, and it
12 sounds like something Ray Dowd would have.
13 And it sounds like something you already
14 have, so I don't know what to tell you.

15 Q. You have free access to go in and
16 out of your studio whenever you want, is that
17 right?

18 A. Of course. It's my studio. But I
19 don't go looking through papers all day long.
20 I've got other things that I do.

21 Q. And if I told you that this had not
22 been provided to us as part of this
23 litigation, you wouldn't have any reason to
24 disagree with me on that, would you?
25

1 copied. I didn't look what he got off of my
2 phone, my computer. I just let him take
3 whatever he needed, whatever he wanted, and I
4 have no idea whether or not he gave you this
5 or he didn't. No clue.

6 Q. Okay?

7 MS. SHAH: You can pull that down,
8 Broderick. Thanks.

9 If you could put up tab 1,
10 Exhibit 14. It's going to be marked
11 393-14.

12 MS. ZERNER: Is this Exhibit 9?

13 MS. SHAH: Yes. Thank you.

14 Q. It's a document that has been filed
15 on the court docket under 393-14. We are
16 going to mark it as Exhibit 9 for the record.

17 (Exhibit 9, Docket 393-14 Baker
18 Museum Exhibit Inventory Checklist, marked
19 for identification.)

20 Q. Do you see this document,
21 Mr. McKenzie?

22 A. Yes.

23 Q. Can you tell me what this is?

24 A. I believe it looks like a checklist
25

1 A. I wouldn't have any basis for
2 knowing one way or the other. You know,
3 you've asked me the same question a couple
4 hundred times now.

5 And it just -- I don't know what
6 Mr. Dowd did. I don't know what he didn't
7 do. I don't know what he gave you. I don't
8 know what you are hiding. And I don't know
9 if I ever saw this with Mr. Dowd. I have no
10 idea.

11 You know, he did all of that on his
12 own, so I wouldn't have any idea what of what
13 he took. I wouldn't have any idea of what he
14 gave you; so, therefore. I can't really
15 aver [sic] that he gave this to you or not,
16 and I can't aver [sic] that he took it from
17 me because I don't know.

18 I just -- you know, I'm telling you
19 everything I know and you keep asking me the
20 same thing and it's not going to change. It
21 just is what it is.

22 I don't know what -- what was sent
23 to you. I didn't review it, I didn't look at
24 what he took. I didn't look at what he
25

1 of what went to the Baker Museum in Naples.
2 And it's basically the same information that
3 is in the book Robert Indiana Agency, which I
4 know that your firm has.

5 Q. So this is a list of Indiana works
6 that were sent to the Baker Museum for
7 exhibition, is that right?

8 A. Yes. And the catalogue indicates
9 what that is and your firm has got it for
10 sure with the pictures as well.

11 MS. SHAH: If you can pull that
12 down, Broderick, and put up tab 1,
13 Exhibit 18, which is 393- -- tab 1,
14 Exhibit 17. Is that right? Yeah, which
15 is 339-17.

16 This is a document that has been
17 filed on the court docket as 393-17. We
18 are going to mark it as Exhibit 10,
19 please.

20 (Exhibit 10, Docket 393-17
21 Continuation of Baker Museum Exhibit
22 Inventory Checklist, marked for
23 identification.)

24 Q. Mr. McKenzie, can you tell me if
25

1
2 this is a continuation of the checklist we
3 just looked at of the Indiana works that were
4 sent to the Baker Museum?

5 A. I can't even read it it's so small.
6 Can you blow it up?

7 It looks like it. Again, that's in
8 the -- that's in the catalogue of the show,
9 Robert Indiana A to Z. It traveled to three
10 or four museums. And all those pictures,
11 including the size, the color, is all in the
12 catalogue, which you have, and which is
13 available on Amazon and a hundred other
14 places.

15 MS. SHAH: All right. You can pull
16 that down. And if you could put up
17 tab 1, 393-18, please.

18 This is a document that has been
19 filed on the court docket under 393-18.
20 We are going to mark it as Exhibit 11
21 for the record, please.

22 (Exhibit 11, Docket 393-18
23 Continuation of Baker Museum Exhibit
24 Inventory Checklist, marked for
25 identification.)

1
2 litigation, you wouldn't have any basis to
3 disagree with me, would you?

4 A. And if I told you that I answered
5 this question 27 times, would you have any
6 reason to disagree with me?

7 Q. Yes. Well, I tried to ask it to
8 you in the -- in the aggregate and your
9 attorney objected. So now I'm asking it with
10 respect to every document we are looking at.

11 MS. ZERNER: Mr. McKenzie, before
12 you answer, she is asking the question
13 separately for each document, which she
14 has a right to do.

15 THE WITNESS: Okay.

16 MS. ZERNER: If a question can be
17 asked in a different way without
18 referencing potential exhibits that we
19 don't know what they are, but if you
20 could just have some patience and answer
21 the direct question, thank you.

22 A. I don't know if I have any basis
23 for knowing if you got -- you've gotten this
24 information or not or how you got it or why.
25 Because, like I said, I don't really have

1
2 Q. Mr. McKenzie, can you tell me if
3 this is also a continuation of that checklist
4 that shows Indiana works that were sent to
5 the Baker Museum for exhibition?

6 A. I would say yeah. Yeah. These are
7 boxes they were shipped out in and they sent.

8 Q. And does it list some of the
9 Indiana works that you fabricated with
10 Bob Dylan lyrics on them?

11 A. Yes. 1 through 12 under case 60 by
12 40, or whatever it is. Number -- Number 19
13 is all Bob Dylan works.

14 Q. Okay. And can you look at it and
15 tell me if this list also includes works with
16 the images of USA FUN, EAT and ART?

17 A. I see EAT and ART at the bottom --

18 Q. You see USA --

19 A. -- under 20, yes.

20 Q. Thank you.

21 And are you aware that we found
22 these records in your studio?

23 A. I am unaware.

24 Q. And if I told you that these
25 records had not been produced to us in the

1
2 access to all this material.

3 I'm going to assume if you tell me
4 you got it at my studio, that's where you got
5 it from. I don't know. I'm not going to sit
6 here and debate it with you because I don't
7 really care. It's not important. You know,
8 if you got this before, I don't know. I
9 would think that --

10 MS. ZERNER: Mr. McKenzie, I think
11 the question this time was whether or
12 not you have a basis to know whether
13 this was produced by your attorneys in
14 this litigation. Do you know whether --

15 A. Is that the question? Are you
16 asking me if my attorneys produced this in
17 this litigation? Is that your question?

18 Q. I'm asking if I told you that this
19 has not been produced in this litigation
20 would you have any basis to disagree with
21 that?

22 A. I really wouldn't know. Like I
23 said, I don't know what was produced to you.
24 It's impossible for me to know.

25 Q. Okay?

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MS. SHAH: Broderick, you can pull that down. If can you put up tab 1, Exhibit 13, which is 393-13.

This is a document that has been filed on the court's docket under 393-13. We are going to mark it as Exhibit 12 for the record, please.

(Exhibit 12, Docket 393-13 Images for HOPE calendar, marked for identification.)

Q. Do you see this, Mr. McKenzie?

A. Yes.

Q. Can you tell me what this is?

A. I'm not sure. We were working -- Indiana wanted to do a calendar, so we went through different kinds of proposals for a calendar. Whether or not we ever got this done, I don't think so, we had a lot of different -- you know, he wanted to do a calendar. We thought it was a cool idea.

And we came up -- first we were going to do a different color of HOPE for every month and then it was going to be something else. I think we ended up with

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doing a different color of HOPE for every month.

I don't think this calendar happened. It looks like another one of those projects we spent months on but nothing came of it.

Q. Is this your handwriting?

A. Yes.

Q. Do you recognize this document?

A. Not really. Because, you know, if -- if we work on something and it just falls apart. You know, if he doesn't green light it, it's gone. It's just gone.

So I have a feeling that this was one of the projects that we spent all kinds of times pitching and, at the end of it, it just never happened. I don't think we ever finished this. It doesn't ring a bell.

(Simultaneous crosstalk.)

We worked on this for -- we were working on the calendar for quite a long time. We thought it was a good idea, but we didn't know how to really execute it. I think in the end we did 12

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variations of hope in different color ways and that was the calendar. This -- I'm 99.9 percent sure this just didn't happen. It's a dead project.

Q. Are you aware that the document appears to contain images of Indiana works to which Morgan alleges it has the rights?

A. The word "alleges" is what you allege, and what I allege is that Morgan doesn't have any right. So there you go. And the U.S. copyright seems to agree with me.

Q. Would it surprise you to learn that we found this in your studio?

A. No. I don't know. It looks like my handwriting. I guess it was here.

Q. And if I told you that this hadn't been produced to us in the litigation, you wouldn't have any basis to disagree with me, would you?

A. I wouldn't have any basis to agree or disagree because, like I said, I don't know what Mr. Dowd took pictures of and I don't know what he gave you and I don't know

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what you've hidden.

MS. SHAH: Okay. You can pull this down, Broderick. And if you can put up the document that's marked tab 001A.

This is a photograph of a book called Susan Sheehan Gallery, New York. We are going to mark this as exhibit -- are we on 13? 14?

THE EXHIBIT TECH: On 13.

MS. SHAH: 13. Let's mark this as Exhibit 13 for the record, please.

(Exhibit 13, Photograph of Susan Sheehan Gallery book, marked for identification.)

Q. Do you recognize this, Mr. McKenzie?

A. Yes. I know Susan Sheehan very well. And when she did this book, she asked me to comment on it.

Q. This is a book that we found in your studio. Would that surprise you?

A. No. Because I've had it since 1991. It's a book of Robert Indiana's prints. And as somebody who is very

1
2 interested in Robert Indiana and collected
3 his prints and was on the edge of doing a
4 huge project with Robert Indiana in 1993, I
5 would have to have this book because it's
6 important.

7 Q. Did you tab the book? Did you put
8 the yellow Post-its in it?

9 A. Probably. You know, that was a
10 book that you look at because Indiana, like
11 every other artist, revisits his images.
12 That's what artists do.

13 Andy Warhol does Marilyn five
14 different ways. Indiana does LOVE 50
15 different ways. And Indiana revisits all of
16 his other art all the time.

17 So when you are thinking about
18 doing a project with Robert Indiana, it's
19 important to know what else he did. That's
20 intellectually and as a publisher something
21 you are going to do.

22 Now, if you are just not a
23 publisher and just somebody off -- ripping
24 off one image of Robert Indiana, different
25 conversation. But now you are not really a

1 So Jamie, on the other hand, was
2 pushing for Taylor Swift, which Bob and I
3 were not interested in. So Bob was really
4 was very, very excited about the Bob Dylan
5 project. In fact, when we finished it, he
6 put it in the windows of -- of his studios so
7 everybody could see what he was up to.

8 Q. And you didn't produce to us any
9 photographs or photocopies from this book in
10 the litigation, did you?

11 A. I didn't -- I don't know what.
12 Again, I don't know what Mr. Dowd did. But I
13 wouldn't see that he or I would have thought
14 this had any relevance. It's just a
15 commercial book of Robert Indiana's that's
16 available all over the place. In museums, on
17 Amazon. It's nothing special. It's just a
18 book.

19 MS. SHAH: And you can pull this
20 down, please. If you could put up
21 tab 1-23 -- sorry. It's tab 1 -- it's
22 going to be 393-23.

23 Q. This a photograph that has been
24 filed on the court docket as 393-23. We are
25

1 publisher.

2 I'm a publisher. I work with the
3 artist. And like Indiana said, he and I
4 collaborated. That's how I work as a
5 publisher. He has an idea; I have an idea.
6 I like his idea, I go with his idea. He
7 likes my idea, we go with my idea. That's
8 just how it works.

9 Q. And this book contains images of
10 Indiana works that you later used as part of
11 the Bob Dylan series that you fabricated,
12 right?

13 A. Maybe. I don't know. I mean, the
14 Bob Dylan stuff was mainly done back and
15 forth, right, with Bob right. In many ways
16 it was really a collaboration between Jamie
17 Thomas, myself and Bob, and everybody had
18 ideas. It was really Bob's idea to work with
19 Bob Dylan. He was -- I didn't realize how
20 big a Bob Dylan fan he is. And just by a
21 fluke I happened to know Bob Dylan's
22 management. So I was able to run stuff down.
23 And, you know, I was excited because I happen
24 to like Dylan as well.
25

1 going to mark it as Exhibit 14 for the
2 record, please.

3 (Exhibit 14, Docket 393-23
4 Photograph of study for Indiana/Dylan
5 project, marked for identification.)

6 Q. Do you see this photograph,
7 Mr. McKenzie?

8 A. Yes. I know it very well.

9 Q. How do you know it very well?

10 A. Because I worked on this project
11 with Bob and Jamie Thomas for almost four
12 years. We went through -- Bob's idea was
13 that -- most of his paintings, if not all of
14 his paintings, done from the '60s were done
15 with Bob Dylan blasting in the background,
16 which is how we ended up with Bob Dylan and
17 Bob Indiana working together.

18 And he felt that this was the right
19 thing, the Dylan like a rolling stone,
20 because initially we were going to do --
21 wanted to illustrate all of Dylan's work.
22 And I got the book from one of Dylan's
23 people, and it was 1623 pages. So it was
24 like, I don't think we can do this. We will
25

1 all be dead by the time we finish it.

2 And I was with Billy Name, who was
3 Warhol's assistant, who said that "like a
4 rolling stone" was all about Andy Warhol and
5 Eddy Sedgwick and that was the pivotal thing
6 and it was all about the '60s.

7 So Indiana got excited, as did I,
8 and we narrowed it down to trying to do
9 something with "like a rolling stone." And
10 then, from there it became Bob said we should
11 only use '60s pictures. We should get '60s
12 pieces and put them in because that's when I
13 listened to Dylan, that's what Dylan is
14 about, that's what I'm about. Putting his
15 '60s stuff with my '60s stuff, that's the way
16 to go.

17 So that took everything off the
18 page and limit it to where we were headed
19 with it. And then it was a matter of from
20 there, trying to figure out, now that we know
21 that, how do we -- what are we doing.

22 It was a very long process. It
23 went through a lot of stages. Bob had ideas.
24 Bob had a lot of ideas. Jamie had a lot of

1 A. I don't know. I'm not -- I mean,
2 we did a whole design book of it. It looks
3 like the study for the book. And it also was
4 a print and also a painting. So we did the
5 whole -- this is one of the only projects
6 that we ever did that we did all -- all those
7 things out of the same because we were all
8 very excited about this project.

9 It was a very -- you know, it took
10 a long, long time to realize. And when we
11 finally got to the end of it, we all felt
12 like, Hey, this was a master piece. This is
13 really important.

14 And, you know, so I said to Bob,
15 anything you want to do it, let's do it. You
16 want to do it on metal? We'll do it on
17 metal. You want to do it on wood? We'll do
18 it on wood.

19 So we did canvas, paper and a giant
20 book, and then we did it on metal as well.
21 It was probably the most time-consuming
22 project we did of all the things we did with
23 Bob. And the one that he -- he certainly had
24 the most passionate feeling for.

1 ideas.

2 To tell you the truth, I had less
3 ideas than they did. I loved the project.
4 They were the ones powering the ideas, and we
5 came up with different ways of putting
6 Dylan's stuff, without putting it over
7 Indiana's stuff, somehow incorporating with
8 Indiana's stuff.

9 And he saw these types of things as
10 typical of what he did. Diamonds and
11 squares; so we stuck with that idea. It was
12 a very long and interesting project.

13 So we were very happy with how it
14 came out. So was Bob.

15 And when we first exhibited it, it
16 was interesting to see that people would walk
17 around singing the song as they watched the
18 work, which we thought was very cool.

19 Q. Do you recognize this photograph as
20 a page of a folio that you keep in your
21 studio?

22 A. As a who of a what?

23 Q. As a -- as a page in what looks to
24 be a portfolio that you keep in your studio.

1 Q. So it wouldn't surprise you if I
2 told you we found this in your studio, right?

3 A. Not at all. This is one of the my
4 most favorite projects I've ever did in my
5 life.

6 Q. And you don't have any idea of
7 whether this or images of this was produced
8 to us in the litigation, is that correct?

9 A. Wouldn't have any idea. But it's
10 in the book that you guys have. We are very
11 proud of that book and everybody who has it
12 likes it.

13 Robert Indiana A to Z, the book
14 that you guys have -- the estate has the
15 book, Bob has the book, Morgan has the book.
16 You know, it is what it is. It's a pretty --
17 pretty well-known group of pieces that were
18 done around Bob Dylan.

19 MS. SHAH: Okay. If you could put
20 up tab 1, Exhibit 24. It's going to be
21 393-24.

22 This is a photograph that was filed
23 on the court's docket 393-24. We are
24 going to mark it as Exhibit 15 for the

record, please.

(Exhibit 15, Docket 393-24

Photograph of limited edition

Dylan/Indiana small and big books,
marked for identification.)

Q. Do you see this, Mr. McKenzie?

A. Yeah. Those are the Bob Dylan
books stacked up there. It was a limited
edition of Bob Dylan books that we did. The
ones on the left, those little ones, were the
studies for it.

Usually when we do a huge project
like this, which is very expensive to
produce, we produce a smaller version of it
first to see if this there is any corrections
we want to make because you really don't want
to make a whole stack of things that are,
when you look over your shoulder, you know,
because we were pretty sure we had a landmark
product. You know, a piece of art. And we
wanted to get it right.

We didn't want to produce it and
find out that we wished we had changed this
to that or that to this. So we made a

is there anything you want to change. I
don't remember how much we changed or why,
but I'm pretty sure we made changes from the
small book to the big book.

Q. Did you sell these books?

A. Unfortunately not that well.
Probably a million dollar loss, but that's --
that's really was my intent was to believe
that somewhere down the road Robert Indiana
would be as -- would be much bigger and that
I would take the risk of doing all these
productions with him. Whether they worked or
they didn't, I wouldn't put them out on the
market and just sell them for nothing. That
I would rather sit on them until everything
cleared, until he became as big as I felt he
should be.

So I took the risk on a lot of
things, like the Dylan book was a huge risk.
You know, it didn't -- to date it hasn't
really panned out to even close to paying for
what it cost to make, let alone what I gave
Indiana to do it.

Q. Do you recognize this as a photo of

smaller one. And I think we did make several
changes from the smaller one to the bigger
one.

I've always done that, actually.

You know, whenever I've done -- like, with
Alex Katz, all the paintings I did that were
8 feet by 12 feet, we did them 3 feet by
4 feet. And before that, we actually did
them a foot and a half by 2 feet. But a foot
and a half by 2 feet, if it doesn't work out,
it doesn't work out. But when you start
doing it 9 feet by 12 feet, it's a little
embarrassing to have something that big that
sucks.

Q. So are these editions of books that
contain the images of the Bob Dylan works you
did with Indiana? Is that right?

A. Yes.

Q. Okay. And the smaller ones up in
the left-hand corner are studies of the
books, is that right?

A. Yes. It's similar to the bigger
books. But I do believe we made some color
changes because we gave Bob a bunch and said

these books stacked up in your studio?

A. Yes.

Q. Do you know whether photographs of
these books or images of these books or these
books themselves were provided to us as part
of the discovery in this litigation?

A. Well, they're certainly in the
Robert Indiana A to Z. It's very
well-documented. It talks about what it is,
how it is, why it's out there and everything
else.

So, you know, I don't know how many
times you need information about the same
thing or if Dowd gave you more information.
Like I said, I didn't monitor what he gave
you and so, therefore, I don't know what he
gave you. I don't know, frankly, if what you
are telling me is true either; so I can't
comment either way.

MS. SHAH: Okay. You can pull that
down and if you could put up tab 1,
Exhibit 30, which is 393-30.

Q. Can you tell me what this is --
sorry. Let me mark this. This is a

1
2 photograph that has been filed on the court's
3 docket under 393-30. We are going to mark
4 this as Exhibit 16, please.

5 (Exhibit 16, Docket 393-30
6 Photograph of McKenzie studio, marked for
7 identification.)

8 Q. Do you see this, Mr. McKenzie?

9 A. Yes.

10 Q. Do you recognize this as a
11 photograph of your studio?

12 A. Yes. Do you see why now it's a
13 good idea to move these things to a storage
14 space? You know, this is an 1840s barn.
15 Everything is stacked on top of each other.
16 It's highly vulnerable. And getting
17 everything in a storage space where I can see
18 what's what and why is more than intelligent.
19 It's like I don't know why it took me so long
20 to wake up to it. But when I see this, I
21 want to throw up.

22 Q. All of those stacked boxes and
23 canvases we are looking at, are those all
24 Indiana works?

25 A. Yes.

1 Photograph of trial piece for
2 Dylan/Indiana book, marked for
3 identification.)

4 Q. Can you see this, Mr. McKenzie?

5 A. Yes. This looks like as we were
6 doing or trying to do the Bob Dylan book, the
7 changes were coming in every -- almost every
8 week. Every time I went up to Vinalhaven, we
9 would have a discussion of how this book is
10 going to be made or what's going to happen to
11 it.

12 And coming up with the size and
13 shape and, you know, like some were just
14 diamonds. And then you look at the one on
15 the bottom. It's a diamond within a
16 rectangle.

17 So it really was a lot of, you
18 know, Bob green lighting it by saying, Well,
19 I did this before with -- did a series on
20 confederacy that had these types of shapes.

21 So with Bob there was always like a
22 sense of continuity. You know, he -- and
23 it's funny. Like, at one point he came up
24 with rainbow rolls, which he had never done
25

1 Q. Okay.

2 A. And there's -- you can a few things
3 in there that are not. But, you know, I
4 would say 90 percent of this are Indiana
5 works. Most of the other things I have,
6 Larry Rivers and Alex Katz and Frank Stella
7 and Claes Oldenburg, most of that stuff is in
8 a different storage and none of the Indiana
9 is there. Indiana was all kept on canvas --
10 on canvas in my spaces.

11 I mean, I see a Joey Ramone
12 portrait standing up there. That is not an
13 Indiana. But everything else I see there
14 looks like it's an Indiana.

15 Q. Okay?

16 MS. SHAH: You can pull that down,
17 please. If you could put up tab 1,
18 Exhibit 39, please. That's going to be
19 393-39. Thank you.

20 This a document that has been filed
21 on the court's docket under 393-39. I
22 am going to mark it as Exhibit 17 for
23 the record, please.

24 (Exhibit 17, Docket 393-39)
25

1 before. And it's a -- which is a technique
2 in silk screening of rolling one color into
3 another so you get an effect which he had --
4 most of the time he is all about I did this
5 in 1961, so we will do it again.

6 And finally, in that one particular
7 instance, and one other instance, like in the
8 rainbow roll, I said to him that this is
9 going to be weird because everybody
10 associates Warhol with it, and it's not
11 really Indiana colors.

12 He said, You're not going to sit
13 there and tell me what colors an artist is
14 allowed to use, are you?

15 And I was like, Wow. I felt like
16 such a jerk.

17 So he is an interesting character.
18 In this case he was intent on getting it
19 right. I think it took us four years to make
20 this thing. So the number of times I went
21 back and forth. And one week it was round;
22 the next week it was square; the next week it
23 was a triangle; the next week it was a
24 rectangle.
25

1
2 So it went through a lot, a lot of
3 changes. I don't know where this is in the
4 relationship, but we had a stack of stuff you
5 just had to throw in the garbage. You know,
6 where it's like, if he doesn't approve it,
7 what are you going to do with it? Just paper
8 with ink on it.

9 Q. So am I correct this is a mockup or
10 a study of a page in the Bob Dylan book that
11 you ultimately produced?

12 A. Yes. This would have been one of
13 who knows how many hundreds of trial pieces
14 that were done. Some were drawn on a napkin.
15 Some were down on a piece of paper. Some
16 were drawn to scale. Some were just -- like
17 this is just obviously no giant attempt to
18 make it look like anything other than get a
19 rough idea of what it could be.

20 So there were lots and lots and
21 lots of these things. Some ended up with
22 him, some ended up in the garbage, some ended
23 up in a portfolio. Who knows? You know,
24 there is a lot of trial and error goes on.

25 Q. And it wouldn't surprise you that

1 A. Yes.

2 Q. This is a photograph of what looks
3 to me like a large canvas that we found in
4 your studio.

5 A. It's metal.

6 Q. It's metal. So you recognize this?

7 A. See, that's why we got into this.
8 Is because in 2012 or so, or 2013, you know,
9 the ability to bend metal because it was now
10 programmed through computers was a whole new
11 game.

12 So it was slick enough that it
13 looked like a -- it looked like a painting.
14 And we were -- both Bob and I were really
15 excited about that. That's why we finished
16 the LOVE project, and then we did the HOPE
17 project too. Because both of us loved the --
18 loved the look of these things.

19 Q. So this is a LOVE image on metal
20 that you produced that is now sitting in your
21 studio, is that correct?

22 A. Yes. And again, the continuity of
23 this goes back to 1994. That's when we --
24 believe it or not, it's when we started the

1 we found this in your studio, would it?

2 A. No. I mean, we had thousands of
3 these things we did. I don't know how much
4 of it we kept and how much we threw away.

5 But if you are going to ask me if
6 Mr. Dowd sent you this or not, again, my
7 answer is I don't know what he sent you. I
8 have no idea. You have to tell me. And then
9 you have to ask him and he will either deny
10 it or not. I don't know. I can't speak to
11 him. I don't know what he did.

12 Q. Okay. Thank you.

13 MS. SHAH: You can take that down.
14 If you could put up tab 1, Exhibit 29,
15 please, which is 393-29.

16 It's a document that has been filed
17 on the court's docket 393-29. We are
18 going to mark it as Exhibit 18 for the
19 record.

20 (Exhibit 18, Docket 393-29
21 Photograph of LOVE on metal, marked for
22 identification.)

23 Q. Mr. McKenzie, do you see this
24 photograph?
25

1 metal project was 1994. It went through all
2 kinds of edifications and finally we got to
3 the point where we both liked it.

4 We had thrown a number of them in
5 the garbage. We tried it in stainless steel.
6 We tried it on aluminum. We tried it on
7 iron. And it just never -- never clicked.
8 And then this thing was much later and we
9 finished the project.

10 MS. SHAH: If you can take that
11 down and pull up tab 1, Exhibit 25,
12 which is 393-25.

13 This a document that has been filed
14 on the court's docket under 393-25. We
15 will mark this as Exhibit 19 for the
16 record, please.

17 (Exhibit 19, Docket 393-25 back of
18 metal LOVE on metal, marked for
19 identification.)

20 Q. Mr. McKenzie, do you recognize
21 this?
22

23 A. Yes. That's the back of the thing
24 you are looking at. So in order to identify
25 what it was, we wrote, as we always do on a

1
2 canvas or a print, the name of the piece.
3 And in his case, the way he names his LOVE
4 pieces is Red Purple, Red Blue, Red Green.
5 And they were numbered consecutively of what
6 they were. So that's how that's -- was the
7 way you could tell one from another.

8 Q. You don't know whether photographs
9 or images of this work were produced to us in
10 this litigation, correct?

11 A. No idea.

12 Q. And certainly you haven't turned
13 over this work to the estate or Morgan as
14 part of this litigation, right?

15 A. What do you mean "turned over this
16 work"?

17 Q. Given the work to the estate or
18 given the work to Morgan.

19 A. Given the work? Are you talking
20 about the physical piece?

21 Q. Yes, the physical piece.

22 A. Why would I do that?

23 MS. ZERNER: Just yes or no,
24 Mr. McKenzie, about whether you have or
25 not.

1
2 things were indeed given to Brannan. But he
3 gets the artist's proofs, but he doesn't get
4 my pieces, no.

5 Q. Mr. McKenzie, do you still possess
6 this piece?

7 A. Do I who what?

8 Q. Do you still possess the piece that
9 we are looking at in the exhibit?

10 A. I think so. I don't know what's up
11 there to tell you the truth. But probably.
12 I mean, I still have several of the Book of
13 Love pieces, and Indiana's got his -- his
14 artist proofs, which are, I guess, with
15 Brannan if he hasn't sold them to pay for his
16 litigation. I don't know, or pay himself I
17 guess more accurately.

18 MS. SHAH: All right. You can pull
19 this down.

20 If you could you put up tab 1,
21 Exhibit 33. It should be marked 393-33.
22 This was a photograph that was filed on
23 the court docket under Docket 393-33. I
24 am going to mark this as Exhibit 20 for
25 the record, please.

1
2 A. I gave the estate all the artist's
3 proofs because Indiana left them at my studio
4 because they took up too much space in his
5 studio and it took up a huge amount of space
6 in my studio.

7 So when finally Brannan said, Do
8 you have anything of Robert Indiana's, he had
9 left in my studio in Vinalhaven quite a lot
10 of his artist's proofs. And at my own
11 expense, I put together all the stuff that
12 Bob left in my studio for two years and got
13 them to James Brannan.

14 So whatever was Robert Indiana's --
15 and there was quite a lot of it. I don't
16 remember how many pieces but my guess, if I
17 would recollect, it was I think 95 pieces he
18 had left in my studio. It was a huge
19 insurance liability for me.

20 -- I brought to Brannan. I
21 personally filled up two bus loads and also
22 sent another whole -- I don't know how many
23 pallets of UPS to him.

24 So everything that was Robert
25 Indiana's of (inaudible) and several other

1
2 (Exhibit 20, Docket 393-33
3 Photograph of file cabinet with Indiana
4 prints, marked for identification.)

5 Q. Can you see this photograph,
6 Mr. McKenzie?

7 A. Yes.

8 Q. Do you recognize this?

9 A. Yes. This is one of many file
10 cabinets that are upstairs, and I think
11 downstairs as well, in my studio. And each
12 one of these drawers has a stack of Robert
13 Indiana prints in it; so when you try to
14 count from one to 1,000, some of these
15 drawers can contain 300 pieces.

16 So if you look in the drawer it is
17 going to say number 1 the at the top and 300
18 at the bottom. So if you go through that
19 drawer, you might have a thousand pieces
20 right there. You might have 1200. And
21 that's -- that's how it's set up.

22 Q. Okay. And this includes prints of
23 the Indiana work that has the image ART on it
24 right, A-R-T?

25 A. I don't know. There are ART pieces

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1
2 in there and LOVE pieces in there and HOPE
3 pieces in there. This is almost all Robert
4 Indiana work, and every one of those drawers
5 has got a wad of Indiana prints. So right in
6 that one file cabinet I will bet you there
7 are 700 pieces. Maybe more.

8 Q. Okay. Are there also Tikva pieces
9 in there?

10 A. Yes. Not US -- you asked me Tikva
11 and Ahava. There are some Tikva proofs in
12 there. The edition is with Rosenbaum I
13 believe.

14 MS. SHAH: Okay. And for the court
15 reporter, that's Tikva, T-I-K-V-A.

16 Q. Are there EAT prints in there,
17 E-A-T?

18 A. Probably.

19 Q. Are there Ahava --

20 A. -- no. Ahava, that's from a long,
21 long time ago and I didn't -- you know, I had
22 a minor role in that. I was not the
23 publisher. You know, I bought a couple of
24 pieces at the beginning. That was it. And I
25 don't think I have any left. I might have

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1 mentality is creepy.

2 Q. Are you aware of why Mr. Markham
3 thought he needed to file a letter with the
4 court indicating that you had moved art works
5 off the premises before the second
6 inspection?
7

8 MS. ZERNER: Objection to the
9 extent -- Mr. McKenzie, I just want to
10 object to the extent it calls for
11 attorney/client privileged
12 communications.

13 Now, if you can otherwise answer,
14 go ahead.

15 A. I have no idea.

16 Q. Are you aware or do you have an
17 understanding of how Mr. Markham learned that
18 you had moved art works off the property
19 before the second inspection?

20 A. No. Like I said, I thought we
21 would -- I was expecting to see from you a
22 detailed list of all 4,000 pieces and either
23 complaining I had more than 4,000 or less
24 than 4,000 with a line-by-line breakdown of
25 every piece that you saw with a photograph

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1 one left somewhere. I don't even know.

2 Q. And you have no basis to say one
3 way or another whether photographs or images
4 of all of these prints were produced to us in
5 the litigation, correct?
6

7 A. All of that would be in the same
8 Robert Indiana A to Z book, and in it, it
9 would indicate what the edition size is, how
10 big they are. It's very well documented.

11 And certainly you have that book,
12 as does Mr. Brannan, as does Mr. Lipson
13 (phonetic). So I don't know what you need
14 beyond that. I mean, I can't send you
15 every -- every single piece of it. If I did
16 150 of something, you would have one and say
17 there is 150. What do you -- going to send
18 you pictures of all 150 pieces?

19 That would seem to me to be
20 obnoxious. I don't think that would be
21 anything to do with discovery. That would be
22 attempting to load things, to overburden
23 something. And I would certainly never
24 approve of that. I don't know if Mr. Dowd
25 did or not. But to me, that kind of

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1 with it, its size, dimensions, it's medium,
2 its year, whether or not it was signed or
3 initialed or not signed.

4 And then, frankly, I was going to
5 compare that to my own notes knowing that I
6 have defective information on that art
7 archive and update the art archive. That's
8 what I thought was going to happen.

9 I haven't seen anything from you
10 indicating how many pieces you found, what
11 they looked like, where or why. I saw
12 nothing. I have no list.

13 And to me it's like saying here is
14 \$4 million in cash and you didn't count it.
15 I don't get it.

16 All you did was take pictures of
17 the briefcase. I don't understand how you
18 think you are making a deal or what's going
19 on or what the story is, but it seems at best
20 very sketchy.

21 Q. And so am I correct that you don't
22 know how Mr. Markham learned that you had
23 moved art works off the property before the
24 second inspection?
25

1
2 A. I don't know. And frankly, I don't
3 care because, I mean, I moved it when I
4 thought we were done with this inspection
5 stuff. I thought all we were doing was
6 looking at documents.

7 So I had no reason to even consider
8 telling him. Why would I tell him? For
9 what? Should I ask him if I can drink water?
10 I mean, why would I do that?

11 MS. SHAH: I think this is probably
12 a good time for a break.

13 MS. ZERNER: Yes. I think we've
14 been going two hours almost.

15 MS. SHAH: Yes. Let's go off the
16 record, please.

17 THE VIDEOGRAPHER: Off the record
18 at 3:50 p.m.

19 (Recess.)

20 THE VIDEOGRAPHER: On the record.
21 The time is 4:08 p.m.

22 THE WITNESS: Nothing is coming up
23 on my screen here, so I don't know what
24 to do.

25 MS. SHAH: Sorry. Let's go off the

1
2 that had any relevance. And the same for all
3 of my contractors and subcontractors. I
4 don't remember a contractors or
5 subcontractors coming to look for files.

6 Most of what my studio assistants
7 did to look for files would have been done in
8 conjunct with when Dowd's staff was here.

9 Q. So those one or two visits?

10 A. Yes.

11 Q. Did your studio assistants or
12 employees spend a lot of time looking through
13 other of your or American Image's files,
14 computer files, electronic files -- any of
15 your or American Image's files, including
16 computer files, electronic files, emails, et
17 cetera?

18 A. All of that was done by Dowd. We
19 left the computer -- I left the computer and
20 phone with him. And he did -- I can't
21 remember. He had some name for what it was
22 that somehow analyzed the computer and got
23 whatever was important. I can't remember
24 what he called it. But my computer and phone
25 were there for probably six hours while they

1
2 record so we can fix this.

3 THE VIDEOGRAPHER: Off the at
4 4:08 p.m.

5 (Recess.)

6 THE VIDEOGRAPHER: On the record at
7 4:13 p.m.

8 Q. Hi, Mr. McKenzie.

9 A. Hi.

10 Q. So we've discussed this afternoon
11 one or two visits from Mr. Dowd's colleagues
12 where they searched through your studio and
13 your computer, et cetera for information to
14 produce in that litigation. Do you recall?

15 A. Yes.

16 Q. Other than Mr. Dowd or his
17 associates, how much time would you say your
18 own studio assistants or employees spent
19 searching through the studio for hardcopy
20 documents or information?

21 A. I think most of that was done by
22 Dowd. My studio assistants really spent most
23 of their time going through their own
24 computers and phones to see if there was
25 anything on their pictures or emails or texts

1
2 did whatever they had to do.

3 My studio staff, then they went
4 through their own personal computers and I
5 actually paid them to do so. You know, I
6 paid them as if they were working to go
7 through their own computers and phones as did
8 my subcontractors.

9 Q. About how much time did they spend
10 going through their own computers and phones?

11 A. Quite a lot. And, you know,
12 several of them complained that it was a pain
13 in the ass, as I recall. Especially my
14 subcontractors were particularly upset that
15 they spent so much time doing it. I didn't
16 ask them exactly how much. I don't recall.
17 But it went on for a couple of days.

18 Q. Did you personally search through
19 your own email for responsive documents?

20 A. No. Because Mr. Dowd had some kind
21 of a program -- I can't remember what he
22 called it -- Searchlight or something, that
23 he could type in -- or I guess, put in any
24 kind of search he wanted and it would pull
25 those things out on to a thumb drive.

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1
2 So I would say that his ability to
3 search, from what he described, he seemed to
4 think my ability to search was nothing like
5 his ability to search. And again, I've never
6 tried to search a computer and I'm not a
7 lawyer, so I'm accepting what he says is
8 true.

9 Q. Did you come to understand at any
10 point during this litigation that there was a
11 problem with the discovery that you had
12 provided?

13 A. Not until recently, no. I don't
14 remember anyone telling me, not -- not
15 whoever was involved along the various ways,
16 you know, Lipson or Brannan or Nikas or
17 anybody saying to me, oh, you know, we only
18 have 16,000.

19 I remember they were asking for
20 other people's stuff and the other people
21 provided it. I don't know what more I can
22 really do beyond that.

23 I mean, I know they asked for one
24 or two people that worked for me either a
25 long time ago or -- and I wasn't able to get

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1 A. I told you that Mr. Dowd seemed to
2 think he had a much better source of doing
3 that than mine and encouraged me to leave my
4 computer with him, which I wasn't so happy
5 with, but that's what I did.

6 Q. Okay. So you spent basically no
7 time searching for documents personally, is
8 that right?

9 A. Well, I drove into New York City,
10 left the computer with him for six hours and
11 drove. Back so a ten-hour day was shot to
12 the wind. And he printed it out or put it on
13 a thumb drive, whatever it was, and he seemed
14 to think that that would be much more
15 efficient and much more accurate than me
16 trying to do it by hand, which is what I
17 would have done.

18 MS. SHAH: I don't think I have
19 anything else at this point. Thank you,
20 Mr. McKenzie.

21 THE WITNESS: Thank you.

22 EXAMINATION BY

23 MS. ZERNER:

24 Q. All right. Mr. McKenzie, I have a

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1 them to -- to do anything. But I can't -- if
2 someone doesn't want to participate, I can't
3 really do anything. But otherwise, all the
4 people that were currently working for me at
5 any point in this litigation, they provided
6 anything they possibly could.

7 And I asked them several times.
8 Are you sure? You know, anything. Even if
9 you think it's obscure and really doesn't
10 have anything to do with anything, just put
11 it in. You know, don't -- I mean don't send
12 in your grocery list and stupid stuff. But
13 if it's a comment that you made to me about
14 Robert Indiana, just put it in.

15 So I thought that everybody did,
16 you know, a fairly comprehensive job of going
17 through all their -- their electronic
18 instruments to get whatever was necessary.
19 And my understanding was it was quite a lot
20 of stuff.

21 Q. How much time did you personally
22 spend going through emails or electronic
23 files or hardcopy files to look for documents
24 relevant to this case?
25

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1 few questions before we go.

2 A. Okay.

3 MS. ZERNER: I believe we are on
4 the next exhibit. Should be Exhibit 21,
5 is that correct?

6 MS. SHAH: I think that's right.

7 THE EXHIBIT TECH: Yes, ma'am,
8 that's correct, 21; 21 is correct.

9 MS. ZERNER: I appreciate that.

10 Thank you.

11 All right. Then I am going to mark
12 this next document, which is the order
13 from the Supreme Court of New York.
14 This will be marked Exhibit 21.

15 (Exhibit 21, Supreme Court of New
16 York Order, marked for identification.)

17 Q. And Mr. McKenzie, do you recognize
18 this order?

19 A. Yes, I do.

20 Q. Is this the one that you had in
21 your hand and referenced earlier when you
22 were talking about an order from
23 Judge Schechter?

24 A. Yes.
25

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1 Q. Okay.

2 A. And I was present for that order as
3 well, so I witnessed the entire thing.

4 Q. You were in court at the time that
5 the argument was held on the estate's
6 petition seeking an injunction against you,
7 is that accurate?

8 A. Yeah. It was a 15-minute bench
9 decision. The judge wasn't buying into any
10 of his story.

11 Q. Okay. And Mr. McKenzie, do you
12 take court orders seriously?

13 A. Yeah. I'm a -- you know, my family
14 is in politics. My great-great-grandparents
15 were policemen. And, you know, I'm guy who
16 has driven 350,000 miles with no ticket. I'm
17 very pro-cop, very pro-law.

18 Q. Okay. I just wanted to clarify.

19 I believe I heard you say earlier
20 today in response to questioning about
21 whether you knew there was a court order in
22 place regarding the second visit to your
23 property, the inspection, I believe I heard
24 you say something like, well, it wouldn't
25

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1 Q. All right.

2 MS. ZERNER: I'm going to move on
3 to another document, so this will be
4 marked Exhibit 22.

5 (Exhibit 22, Markham Inventory
6 email to Zaretsky, marked for
7 identification.)

8 Q. And this is an email. One moment.

9 All right. Mr. McKenzie, I am
10 showing you an email between counsel. And
11 this is from John Markham to the attorney Don
12 Zaretsky, and I'm copied on it, Bridget
13 Zerner, and it's entitled "Inventory."

14 Now, I know you are not on this
15 email, but the content here is a message from
16 John Markham saying, "This is the current
17 inventory AIA has including Rosenbaum."

18 Do you see that?

19 A. Yes.

20 Q. Do you recognize the list here,
21 this inventory?

22 A. Yes. That's what we were hoping
23 they would check because we are not sure how
24 accurate this is, right? Like I said, it's a
25

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1 matter one way or the other if there was a
2 court order.

3 Can you clarify what you meant
4 about that when you were speaking to
5 Mr. Markham?

6 A. Yeah. What I -- see I'm very -- I
7 obey authority. I believe in authority.

8 So if John Markham is my attorney
9 and he tells me that people are going to come
10 over on Friday, he doesn't need a court
11 order. I am going to obey him because he is
12 an authority. The court order is obviously a
13 big authority, but, you know I don't speed,
14 and I don't make left-hand turns. I'm just
15 not that kind of person. I'm very pro-obey
16 the law. That's who I am. You know, I'm a
17 straight guy.

18 Q. Okay. Just -- just clarifying that
19 you weren't saying that court orders don't
20 matter, correct?

21 A. No. I would never disobey --

22 Q. Okay.

23 A. -- any kind of authority order.
24 Never would.
25

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1 guess. We made the best guess we could.

2 We were kind of hoping that Nikas
3 and his staff was going to go over it piece
4 by piece by piece and say, Well, you told us
5 there would be 19 things that do this, but we
6 found this and we are missing that or we have
7 more of these or less of these or something
8 else.

9 And we were very surprised --

10 Q. Okay.

11 A. Yeah.

12 Q. Mr. McKenzie, I understand. You
13 explained that before, so I don't -- I just
14 am trying --

15 A. Sorry.

16 Q. -- to get through some -- some
17 other points here.

18 So did you provide this list to
19 your counsel?

20 A. Yes.

21 Q. And did you authorize disclosure to
22 Mr. Zaretsky?

23 A. Yes. And I spoke to Mr. Zaretsky
24 about it as well.
25

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1
2 Q. Okay. And he, at that time to your
3 understanding, represented the Star of Hope?

4 A. Yes. That was my understanding.

5 Q. And did you understand this could
6 also be disclosed to Morgan?

7 A. Yes. As well as to the estate.

8 Q. And did -- okay. And did you
9 purposely leave off any Indiana artwork from
10 this list?

11 A. No.

12 MS. ZERNER: Moving on to another
13 exhibit for some questions. This next
14 one, I'm showing you another email chain
15 that we are marking as Exhibit 23.

16 Q. And this, the top email has a date
17 of May 24, 2021.

18 And Mr. McKenzie, I know you are
19 not copied on this email, but I just want to
20 ask you a few questions about the content
21 because this is, again --

22 A. Okay.

23 Q. -- some messages between counsel.

24 And this was, you can read from the
25 content that this was regarding arrangements

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1 on behalf of the Morgan parties may come as
2 well?

3 A. Yes, I did.

4 Q. And the email from Markham to
5 Mr. Zaretsky about this viewing of the
6 artwork at your studio explains that another
7 attorney from our firm, Tom McCarty, would be
8 there and that you, Mr. McKenzie, were not,
9 but that Oz Gonzalez would be there.

10 Do you recall that?

11 A. Yeah.

12 Q. And did you leave Mr. Gonzalez in
13 charge that day to present the artwork?

14 A. Yes. And also Annette Vessecchia as
15 well. I felt one should be upstairs and one
16 should be down. I don't really know what
17 they did because I wasn't there. Wasn't
18 there, I should say.

19 Q. Was -- were they authorized to show
20 all of the Indiana artwork relevant to this
21 case to the parties?

22 A. Yes. Anything they wanted to show
23 they could show.

24 Q. Did you instruct --

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1 for the first visit to your property where
2 counsel agreed to have these parties come in
3 and see the artwork, okay?

4 (Exhibit 23, Email chain re first
5 visit to American Image Art, marked for
6 identification.)

7 A. Okay.

8 Q. And if you see here, scrolling down
9 to the beginning of the email chain, which
10 starts with Mr. Zaretsky back on May 24,
11 2021, and Mr. Zaretsky is listing names of
12 people who may be or will be coming to your
13 property to look at the art. And he names
14 various people, including some of the
15 Salama-Caro.

16 Mr. McKenzie, did you have an
17 understanding that some of the Morgan parties
18 or their representatives may come to your
19 property to see the artwork in May 2021?

20 A. Yes, I did.

21 Q. There is also a reference here to a
22 Luke potentially coming. It says, Let's put
23 Luke's name on the list.

24 Did you understand that Luke Nikas

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1 A. My desire was to sell all the art
2 and be done with this. That's what I thought
3 we were trying to do.

4 Q. And you opened up your studio and
5 any other parts where there was artwork for
6 them to see?

7 A. Yes.

8 Q. Did you instruct Oz or anyone else
9 that they should hide any artwork from these
10 parties?

11 A. No. It was to my advantage to have
12 as many pieces as I could to get the highest
13 amount of money back that -- that I could
14 get.

15 MS. ZERNER: I'm marking another
16 email chain as the next exhibit,
17 Exhibit 24. Again, you will see,
18 Mr. McKenzie, these are emails between
19 counsel. You are not on the emails, but
20 I want to ask you about some of the
21 content.

22 A. Okay.

23 (Exhibit 24, July 2021 Email chain
24 re second inspection, marked for
25

identification.)

Q. These are emails in July 2021 and I will scroll down to the earliest at the bottom.

So to explain, this is when counsel was discussing the terms of an inspection of your property, which would be a second visit to your property to see documents there, okay?

A. Okay.

Q. Now, Mr. Markham on July 20, 2021, says to Mr. Nikas, in part here -- if you're with me -- there is one part where he says, regarding the draft stipulation that counsel were working on, he says right here, This still says, quote-unquote, artwork and it was my impression from our discussion the other day that you were not planning to copy artwork.

Do you see that?

A. Yes.

Q. Now, Mr. Nikas responds up here in the next email on this chain, up here on July 20, responding to Mr. Markham in this

email, second paragraph, "As for the reference to artwork, correct. I don't intend to inventory all the artwork because that was basically done before."

Do you see that?

A. Yes. That's what I was told, that we were done with that.

Q. That was my question.

Was that relayed to you by Mr. Markham?

A. Yeah. I asked him why are they coming back again. He said they want to see more documents. I said all right, whatever. I mean...

Q. Now, Mr. Nikas does also say here, "I also don't want to be completely precluded from photographing any artwork at our inspection."

Do you see that?

A. Yes. I was not told that though.

Q. Well, let me -- just wait for a question.

You were not there, right?

A. No, I wasn't there. But I was told

it was an inspection of documents.

Q. Okay. And I also want to know, so was Mr. Gonzalez at the second visit as well?

A. I believe so. And I believe both he and Annette were there for both visits.

Q. Okay. Well, did anyone who was at your studio that day for the second visit with Mr. Nikas and the other people coming that day, did anyone report to you that Morgan wanted to or tried to photograph any artwork that day and they could not do so?

A. No. I think they stuck to the original plan of just looking at documents. That's -- that's what I was told. Again, I wasn't there; that's just what I was being told.

Q. And Mr. McKenzie, as you sit here today, do you know the exact dates that you moved artwork to your new storage facility?

A. Honestly, I don't. You know, it's a couple of months ago, so I don't remember the exact timing of it. I would really have to research it to figure it out.

Q. And I understand you agreed to

check for those records.

So, and you made multiple trips to the storage facility, right?

A. Yes.

Q. Is it possible you made some trips to the storage facility when we were discussing a further inspection of documents?

MS. SHAH: Objection.

A. It's possible.

Q. You are not sure?

A. I'm not sure, no.

Q. Well, let me ask you.

Before the second visit, the court-ordered inspection, once you knew that there was going to be a second visit, did you instruct any of your staff to hide the fact that you had moved artwork to a new storage facility?

A. No. I thought that was a positive for everyone. Because, as you saw those limited pictures of my studio, things are stacked up on top of each other; whereas, in the storage facility, they are on shelves and they are lined up where you actually have a

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much better idea of what you are looking at.
I mean, it's very difficult to really see what goes on in the studio because there is so much on top of itself. In the storage facility at least it's somewhat more palatable. Here it's almost impossible.

MS. ZERNER: Thank you, Mr. McKenzie. I don't have any further questions.

THE WITNESS: Okay. Thank you.

MS. ZERNER: Michelle might have follow-up.

MS. SHAH: I don't have anything further. Thank you.

MS. ZERNER: Great.

THE VIDEOGRAPHER: Off the record at 4:35 p.m. This concludes today's deposition.

(Time noted: 4:35 p.m.)

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<p>1 2 ACKNOWLEDGMENT OF DEPONENT 3 I, MICHAEL McKENZIE, do hereby certify that I have read the foregoing pages, 4 and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the 5 corrections or changes in form or substance, if any, noted in the attached Errata Sheet. 6 7 8 MICHAEL McKENZIE 9 DATE 10 11 Subscribed and sworn to before me this day of , 2021. 12 13 My commission expires: 14 15 Notary Public 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 ----- 3 E R R A T A 4 ----- 5 PAGE LINE CHANGE 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>

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